

EXHIBIT 1

PLAINTIFF CHASOM BROWN'S AMENDED OBJECTIONS AND RESPONSES TO DEFENDANT'S FIRST SET OF REQUESTS FOR ADMISSION

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

CHASOM BROWN, WILLIAM BYATT,
JEREMY DAVIS, CHRISTOPHER
CASTILLO, and MONIQUE TRUJILLO
individually and on behalf of all other
similarly situated,

Plaintiffs,

v.

GOOGLE LLC,

Defendant.

Case No. 5:20-cv-03664-LHK-SVK

**PLAINTIFF CHASOM BROWN'S AMENDED OBJECTIONS AND RESPONSE
TO DEFENDANT'S FIRST SET OF REQUESTS FOR ADMISSION**

Pursuant to Federal Rules of Civil Procedure Rules 26 and 36, Plaintiff Chasom Brown ("Brown") hereby objects and responds to Defendant's, Google LLC ("Google"), First Set of Requests for Admission (No. 1). These objections and response are made solely for the purpose of and in relation to this action. In addition, the objections and response set forth in this document are based on Plaintiff Brown's knowledge, investigations, and analysis to date. As discovery proceeds, Plaintiff Brown may become aware of additional facts or evidence and his analysis of the case may change. Plaintiff Brown reserves all rights to supplement and amend his objections and response accordingly.

REQUEST FOR ADMISSION NO. 1:

Admit that, when YOU signed up for YOUR Google Account, YOU reviewed and consented to the GOOGLE PRIVACY POLICY.

ORIGINAL RESPONSE TO REQUEST FOR ADMISSION NO. 1:

Plaintiff Brown objects to this Request to the extent it purports to suggest that review of and consent to Google's Privacy Policy is a necessary predicate for any claim in this litigation. Plaintiff Brown's allegations relate to Google's conduct of secretly and unlawfully intercepting,

1 collecting data from, analyzing, and monetizing Plaintiff Brown's (and class members') browsing
2 activity conducted in private browsing mode, despite Google's representations (including without
3 limitation in the Incognito private browsing mode) that private browsing mode was private and
4 that Plaintiff Brown's (and class members') private browsing information would not be collected
5 by Google. Users did not need any Google account to browse privately, using Incognito mode or
6 otherwise. Further, to the best of Plaintiff Brown's knowledge, he has never logged into any
7 Google accounts in Chrome when using Chrome's private browsing mode.

8 Notwithstanding and subject to these objections, Plaintiff Brown admits that, at or around
9 the time he opened his Google Account and at times thereafter, he reviewed Google representations
10 that he was in "control" of what information Google collects and could exercise such control by
11 enabling private browsing mode, such as the representations outlined in paragraphs 2 and 42 of
12 the First Amended Complaint. He understands this, along with the Chrome Incognito Notice (*i.e.*,
13 the Incognito splash screen that he reviewed each time he began a private browsing mode session
14 in Chrome), to be the Google Privacy Policy. Otherwise Denied.

15 **AMENDED RESPONSE TO REQUEST FOR ADMISSION NO. 1:**

16 Plaintiff Brown objects to this Request to the extent it purports to suggest that review of
17 and consent to Google's Privacy Policy is a necessary predicate for any claim in this litigation.
18 Plaintiff Brown's allegations relate to Google's conduct of secretly and unlawfully intercepting,
19 collecting data from, analyzing, and monetizing Plaintiff Brown's (and class members') browsing
20 activity conducted in private browsing mode, despite Google's representations (including without
21 limitation in the Incognito private browsing mode) that private browsing mode was private and
22 that Plaintiff Brown's (and class members') private browsing information would not be collected
23 by Google. Users did not need any Google account to browse privately, using Incognito mode or
24 otherwise. Further, to the best of Plaintiff Brown's knowledge, he has never logged into any
25 Google accounts in Chrome when using Chrome's private browsing mode.

26 Notwithstanding and subject to these objections, Plaintiff Brown admits that, when he
27 opened his Google Account, although he does not recall exact details of the then-current Privacy
28

Policy, he reviewed and generally consented to the then-current Privacy Policy, and he recalls the disclosures in the Privacy Policy promising that Google would not intercept and collect his private browsing activity, and he did not consent to that interception and collection. Otherwise Denied.

Dated: May 24, 2021

MORGAN & MORGAN

/s/ John A. Yanchunis

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Ryan J. McGee (*pro hac vice*)

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PROOF OF SERVICE

I, Jennifer Cabezas, declare:

I am a citizen of the United States and employed in the County of Hillsborough, Florida. I am over the age of 18 and not a party to the within action; my business address is 201 N. Franklin St., 7th Floor, Tampa, FL 33602.

On May 24, 2021, I served the following document described as:

Plaintiff's Amended Objections and Responses to Defendant's First Set of Requests for Admission

By electronic mail transmission from jcabezas@forthepeople.com on May 24, 2021, by transmitting a PDF format copy of such document to each person at the e-mail addresses listed below. The document was transmitted by electronic transmission and such transmission was reported as complete and without error:

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24 *Attorneys for Defendant*

25 Executed on May 24, 2021, at Tampa, Florida.

26 /s/ Jennifer Cabezas
27 Jennifer Cabezas
28

EXHIBIT 2

PLAINTIFF WILLIAM BYATT'S AMENDED OBJECTIONS AND RESPONSES TO DEFENDANT'S FIRST SET OF REQUESTS FOR ADMISSION

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

CHASOM BROWN, WILLIAM BYATT,
JEREMY DAVIS, CHRISTOPHER
CASTILLO, and MONIQUE TRUJILLO
individually and on behalf of all other
similarly situated,

Plaintiffs,

v.

GOOGLE LLC,

Defendant.

Case No. 5:20-cv-03664-LHK-SVK

**PLAINTIFF WILLIAM BYATT'S AMENDED OBJECTIONS AND RESPONSE
TO DEFENDANT'S FIRST SET OF REQUESTS FOR ADMISSION**

Pursuant to Federal Rules of Civil Procedure Rules 26 and 36, Plaintiff William Byatt ("Byatt") hereby objects and responds to Defendant's, Google LLC ("Google"), First Set of Requests for Admission (No. 1). These objections and response are made solely for the purpose of and in relation to this action. In addition, the objections and response set forth in this document are based on Plaintiff Byatt's knowledge, investigations, and analysis to date. As discovery proceeds, Plaintiff Byatt may become aware of additional facts or evidence and his analysis of the case may change. Plaintiff Byatt reserves all rights to supplement and amend his objections and response accordingly.

REQUEST FOR ADMISSION NO. 1:

Admit that, when YOU signed up for YOUR Google Account, YOU reviewed and consented to the GOOGLE PRIVACY POLICY.

ORIGINAL RESPONSE TO REQUEST FOR ADMISSION NO. 1:

Plaintiff Byatt objects to this Request to the extent it purports to suggest that review of and consent to Google's Privacy Policy is a necessary predicate for any claim in this litigation. Plaintiff Byatt's allegations relate to Google's conduct of secretly and unlawfully intercepting, collecting

1 data from, analyzing, and monetizing Plaintiff Byatt's (and class members') browsing activity
2 conducted in private browsing mode, despite Google's representations (including without
3 limitation in the Incognito private browsing mode) that private browsing mode was private and
4 that Plaintiff Byatt's (and class members') private browsing information would not be collected
5 by Google. Users did not need any Google account to browse privately, using Incognito mode or
6 otherwise. Further, to the best of Plaintiff Byatt's knowledge, he has never logged into any Google
7 accounts in Chrome when using Chrome's private browsing mode.

8
9 Notwithstanding and subject to these objections, Plaintiff Byatt admits that, at or around
10 the time he opened his Google Account and at times thereafter, he reviewed Google representations
11 that he was in "control" of what information Google collects and could exercise such control by
12 enabling private browsing mode, such as the representations outlined in paragraphs 2 and 42 of
13 the First Amended Complaint. He understands this, along with the Chrome Incognito Notice (*i.e.*,
14 the Incognito splash screen that he reviewed each time he began a private browsing mode session
15 in Chrome), to be the Google Privacy Policy. Otherwise Denied.

16 **AMENDED RESPONSE TO REQUEST FOR ADMISSION NO. 1:**

17 Plaintiff Byatt objects to this Request to the extent it purports to suggest that review of and
18 consent to Google's Privacy Policy is a necessary predicate for any claim in this litigation. Plaintiff
19 Byatt's allegations relate to Google's conduct of secretly and unlawfully intercepting, collecting
20 data from, analyzing, and monetizing Plaintiff Byatt's (and class members') browsing activity
21 conducted in private browsing mode, despite Google's representations (including without
22 limitation in the Incognito private browsing mode) that private browsing mode was private and
23 that Plaintiff Byatt's (and class members') private browsing information would not be collected
24 by Google. Users did not need any Google account to browse privately, using Incognito mode or
25 otherwise. Further, to the best of Plaintiff Byatt's knowledge, he has never logged into any Google
26 accounts in Chrome when using Chrome's private browsing mode.

27 Notwithstanding and subject to these objections, Plaintiff Byatt admits that, when he
28 opened his Google Account, although he does not recall exact details of the then-current Privacy

Policy, he reviewed and generally consented to the then-current Privacy Policy, and he recalls the disclosures in the Privacy Policy promising that Google would not intercept and collect his private browsing activity, and he did not consent to that interception and collection. Otherwise Denied

Dated: May 24, 2021

MORGAN & MORGAN

/s/ John A. Yanchunis

John A. Yanchunis (*pro hac vice*)

Ryan J. McGee (*pro hac vice*)

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PROOF OF SERVICE

I, Jennifer Cabezas, declare:

I am a citizen of the United States and employed in the County of Hillsborough, Florida. I am over the age of 18 and not a party to the within action; my business address is 201 N. Franklin St., 7th Floor, Tampa, FL 33602.

On May 24, 2021, I served the following document described as:

Plaintiff's Amended Objections and Responses to Defendant's First Set of Requests for Admission

By electronic mail transmission from jcabezas@forthepeople.com on May 24, 2021, by transmitting a PDF format copy of such document to each person at the e-mail addresses listed below. The document was transmitted by electronic transmission and such transmission was reported as complete and without error:

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24 *Attorneys for Defendant*

25 Executed on May 24, 2021, at Tampa, Florida.

26
27 /s/ Jennifer Cabezas
28 Jennifer Cabezas

EXHIBIT 3

PLAINTIFF CHRISTOPHER CASTILLO'S AMENDED OBJECTIONS AND RESPONSES TO DEFENDANT'S FIRST SET OF REQUESTS FOR ADMISSION

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

CHASOM BROWN, WILLIAM BYATT,
JEREMY DAVIS, CHRISTOPHER
CASTILLO, and MONIQUE TRUJILLO
individually and on behalf of all other
similarly situated,

Plaintiffs,

v.

GOOGLE LLC,

Defendant.

Case No. 5:20-cv-03664-LHK-SVK

**PLAINTIFF CHRISTOPHER CASTILLO'S AMENDED OBJECTIONS AND RESPONSE
TO DEFENDANT'S FIRST SET OF REQUESTS FOR ADMISSION**

Pursuant to Federal Rules of Civil Procedure Rules 26 and 36, Plaintiff Christopher Castillo ("Castillo") hereby objects and responds to Defendant's, Google LLC ("Google"), First Set of Requests for Admission (No. 1). These objections and response are made solely for the purpose of and in relation to this action. In addition, the objections and response set forth in this document are based on Plaintiff Castillo's knowledge, investigations, and analysis to date. As discovery proceeds, Plaintiff Castillo may become aware of additional facts or evidence and his analysis of the case may change. Plaintiff Castillo reserves all rights to supplement and amend his objections and response accordingly.

REQUEST FOR ADMISSION NO. 1:

Admit that, when YOU signed up for YOUR Google Account, YOU reviewed and consented to the GOOGLE PRIVACY POLICY.

ORIGINAL RESPONSE TO REQUEST FOR ADMISSION NO. 1:

Plaintiff Castillo objects to this Request to the extent it purports to suggest that review of and consent to Google's Privacy Policy is a necessary predicate for any claim in this litigation. Plaintiff Castillo's allegations relate to Google's conduct of secretly and unlawfully intercepting,

1 collecting data from, analyzing, and monetizing Plaintiff Castillo's (and class members') browsing
2 activity conducted in private browsing mode, despite Google's representations (including without
3 limitation in the Incognito private browsing mode) that private browsing mode was private and
4 that Plaintiff Castillo's (and class members') private browsing information would not be collected
5 by Google. Users did not need any Google account to browse privately, using Incognito mode or
6 otherwise. Further, to the best of Plaintiff Castillo's knowledge, he has never logged into any
7 Google accounts in Chrome when using Chrome's private browsing mode.

8
9 Notwithstanding and subject to these objections, Plaintiff Castillo admits that, at or around
10 the time he opened his Google Account and at times thereafter, he reviewed Google representations
11 that he was in "control" of what information Google collects and could exercise such control by
12 enabling private browsing mode, such as the representations outlined in paragraphs 2 and 42 of
13 the First Amended Complaint. He understands this, along with the Chrome Incognito Notice (*i.e.*,
14 the Incognito splash screen that he reviewed each time he began a private browsing mode session
15 in Chrome), to be the Google Privacy Policy. Otherwise Denied.

16 **AMENDED RESPONSE TO REQUEST FOR ADMISSION NO. 1:**

17 Plaintiff Castillo objects to this Request to the extent it purports to suggest that review of
18 and consent to Google's Privacy Policy is a necessary predicate for any claim in this litigation.
19 Plaintiff Castillo's allegations relate to Google's conduct of secretly and unlawfully intercepting,
20 collecting data from, analyzing, and monetizing Plaintiff Castillo's (and class members') browsing
21 activity conducted in private browsing mode, despite Google's representations (including without
22 limitation in the Incognito private browsing mode) that private browsing mode was private and
23 that Plaintiff Castillo's (and class members') private browsing information would not be collected
24 by Google. Users did not need any Google account to browse privately, using Incognito mode or
25 otherwise. Further, to the best of Plaintiff Castillo's knowledge, he has never logged into any
26 Google accounts in Chrome when using Chrome's private browsing mode.

27 Notwithstanding and subject to these objections, Plaintiff Castillo admits that, when he
28 opened his Google Account, although he does not recall exact details of the then-current Privacy

Policy, he reviewed and generally consented to the then-current Privacy Policy, and he recalls the disclosures in the Privacy Policy promising that Google would not intercept and collect his private browsing activity, and he did not consent to that interception and collection. Otherwise Denied.

Dated: May 24, 2021

MORGAN & MORGAN

/s/ John A. Yanchunis

John A. Yanchunis (*pro hac vice*)

Ryan J. McGee (*pro hac vice*)

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Attorneys for Plaintiffs

PROOF OF SERVICE

I, Jennifer Cabezas, declare:

I am a citizen of the United States and employed in the County of Hillsborough, Florida. I am over the age of 18 and not a party to the within action; my business address is 201 N. Franklin St., 7th Floor, Tampa, FL 33602.

On May 24, 2021, I served the following document described as:

Plaintiff's Amended Objections and Responses to Defendant's First Set of Requests for Admission

By electronic mail transmission from jcabezas@forthepeople.com on May 24, 2021, by transmitting a PDF format copy of such document to each person at the e-mail addresses listed below. The document was transmitted by electronic transmission and such transmission was reported as complete and without error:

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24 *Attorneys for Defendant*

25 Executed on May 24, 2021, at Tampa, Florida.

26 /s/ Jennifer Cabezas
27 Jennifer Cabezas
28

EXHIBIT 4

PLAINTIFF JEREMY DAVIS' AMENDED OBJECTIONS AND RESPONSES TO DEFENDANT'S FIRST SET OF REQUESTS FOR ADMISSION

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

CHASOM BROWN, WILLIAM BYATT,
JEREMY DAVIS, CHRISTOPHER
CASTILLO, and MONIQUE TRUJILLO
individually and on behalf of all other
similarly situated,

Plaintiffs,

v.

GOOGLE LLC,

Defendant.

Case No. 5:20-cv-03664-LHK-SVK

**PLAINTIFF JEREMY DAVIS' AMENDED OBJECTIONS AND RESPONSE
TO DEFENDANT'S FIRST SET OF REQUESTS FOR ADMISSION**

Pursuant to Federal Rules of Civil Procedure Rules 26 and 36, Plaintiff Jeremy Davis ("Davis") hereby objects and responds to Defendant's, Google LLC ("Google"), First Set of Requests for Admission (No. 1). These objections and response are made solely for the purpose of and in relation to this action. In addition, the objections and response set forth in this document are based on Plaintiff Davis' knowledge, investigations, and analysis to date. As discovery proceeds, Plaintiff Davis may become aware of additional facts or evidence and its analysis of the case may change. Plaintiff Davis reserves all rights to supplement and amend his objections and response accordingly.

REQUEST FOR ADMISSION NO. 1:

Admit that, when YOU signed up for YOUR Google Account, YOU reviewed and consented to the GOOGLE PRIVACY POLICY.

ORIGINAL RESPONSE TO REQUEST FOR ADMISSION NO. 1:

Plaintiff Davis objects to this Request to the extent it purports to suggest that review of and consent to Google's Privacy Policy is a necessary predicate for any claim in this litigation. Plaintiff Davis' allegations relate to Google's conduct of secretly and unlawfully intercepting, collecting

1 data from, analyzing, and monetizing Plaintiff Davis' (and class members') browsing activity
2 conducted in private browsing mode, despite Google's representations (including without
3 limitation in the Incognito private browsing mode) that private browsing mode was private and
4 that Plaintiff Davis' (and class members') private browsing information would not be collected by
5 Google. Users did not need any Google account to browse privately, using Incognito mode or
6 otherwise. Further, to the best of Plaintiff Davis' knowledge, he has never logged into any Google
7 accounts in Chrome when using Chrome's private browsing mode.

8
9 Notwithstanding and subject to these objections, Plaintiff Davis admits that, at or around
10 the time he opened his Google Account and at times thereafter, he reviewed Google representations
11 that he was in "control" of what information Google collects and could exercise such control by
12 enabling private browsing mode, such as the representations outlined in paragraphs 2 and 42 of
13 the First Amended Complaint. He understands this, along with the Chrome Incognito Notice (*i.e.*,
14 the Incognito splash screen that he reviewed each time he began a private browsing mode session
15 in Chrome), to be the Google Privacy Policy. Otherwise Denied.

16 **AMENDED RESPONSE TO REQUEST FOR ADMISSION NO. 1:**

17 Plaintiff Davis objects to this Request to the extent it purports to suggest that review of and
18 consent to Google's Privacy Policy is a necessary predicate for any claim in this litigation. Plaintiff
19 Davis' allegations relate to Google's conduct of secretly and unlawfully intercepting, collecting
20 data from, analyzing, and monetizing Plaintiff Davis' (and class members') browsing activity
21 conducted in private browsing mode, despite Google's representations (including without
22 limitation in the Incognito private browsing mode) that private browsing mode was private and
23 that Plaintiff Davis' (and class members') private browsing information would not be collected by
24 Google. Users did not need any Google account to browse privately, using Incognito mode or
25 otherwise. Further, to the best of Plaintiff Davis' knowledge, he has never logged into any Google
26 accounts in Chrome when using Chrome's private browsing mode.

27 Notwithstanding and subject to these objections, Plaintiff Davis admits that, when he
28 opened his Google Account, although he does not recall exact details of the then-current Privacy

Policy, he reviewed and generally consented to the then-current Privacy Policy, and he recalls the disclosures in the Privacy Policy promising that Google would not intercept and collect his private browsing activity, and he did not consent to that interception and collection. Otherwise Denied.

Dated: May 24, 2021

MORGAN & MORGAN

/s/ John A. Yanchunis

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PROOF OF SERVICE

I, Jennifer Cabezas, declare:

I am a citizen of the United States and employed in the County of Hillsborough, Florida. I am over the age of 18 and not a party to the within action; my business address is 201 N. Franklin St., 7th Floor, Tampa, FL 33602.

On May 24, 2021, I served the following document described as:

Plaintiff's Amended Objections and Responses to Defendant's First Set of Requests for Admission

By electronic mail transmission from jcabezas@forthepeople.com on May 24, 2021, by transmitting a PDF format copy of such document to each person at the e-mail addresses listed below. The document was transmitted by electronic transmission and such transmission was reported as complete and without error:

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24 *Attorneys for Defendant*

25 Executed on May 24, 2021, at Tampa, Florida.

26
27 /s/ Jennifer Cabezas
28 Jennifer Cabezas

EXHIBIT 5

PLAINTIFF CHASOM BROWN'S AMENDED OBJECTIONS AND RESPONSES TO DEFENDANT'S SECOND SET OF REQUESTS FOR ADMISSION

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

CHASOM BROWN, WILLIAM BYATT,
JEREMY DAVIS, CHRISTOPHER
CASTILLO, and MONIQUE TRUJILLO
individually and on behalf of all other
similarly situated,

Plaintiffs,

v.

GOOGLE LLC,

Defendant.

Case No. 5:20-cv-03664-LHK-SVK

**PLAINTIFF CHASOM BROWN'S AMENDED OBJECTIONS AND RESPONSES
TO DEFENDANT'S SECOND SET OF REQUESTS FOR ADMISSION**

Pursuant to Federal Rule of Civil Procedure Rule 36, Plaintiff Chasom Brown ("Brown") hereby objects and responds to Defendant's, Google LLC ("Google"), Second Set of Requests for Admission (Nos. 2–21). These objections and responses are made solely for the purpose of and in relation to this action. In addition, the objections and responses set forth in this document are based on Plaintiff Brown's knowledge, investigations, and analysis to date. As discovery proceeds, Plaintiff Brown may become aware of additional facts or evidence and his analysis of the case may change. Plaintiff Brown reserves all rights to supplement and amend his objections and responses accordingly.

REQUEST FOR ADMISSION NO. 2:

Admit that, when YOU signed up for YOUR GOOGLE ACCOUNT, YOU indicated to Google that YOU agreed to Google's then-current TERMS OF SERVICE.

ORIGINAL RESPONSE TO REQUEST FOR ADMISSION NO. 2:

Plaintiff Brown objects to this Request as vague and overly broad to the extent Google relies on the undefined, capitalized term "TERMS OF SERVICE," as Plaintiff Brown cannot be expected to guess or speculate as to which "TERMS OF SERVICE" Google might be referring to

1 in this Request. Plaintiff Brown further objects to this Request to the extent it purports to suggest
2 that review of and consent to Google's Privacy Policy is a necessary predicate for any claim in this
3 litigation. Plaintiff Brown's allegations relate to Google's conduct of secretly and unlawfully
4 intercepting, collecting data from, analyzing, and monetizing Plaintiff Brown's (and class
5 members') browsing activity conducted in private browsing mode, despite Google's
6 representations (including without limitation in the Incognito private browsing mode) that private
7 browsing mode was private and that Plaintiff Brown's (and class members') private browsing
8 information would not be collected by Google. Users did not need any Google account to browse
9 privately, using Incognito mode or otherwise. Further, to the best of Plaintiff Brown's knowledge,
10 he has never logged into any Google accounts in Chrome when using Chrome's private browsing
11 mode.

12 Notwithstanding and subject to these objections, Plaintiff Brown admits that, at or around
13 the time he opened his Google Account and at times thereafter, he reviewed Google's
14 representations that he was in "control" of what information Google collects and could exercise
15 such control by enabling private browsing mode, such as the representations outlined in paragraphs
16 2 and 42 of the First Amended Complaint, which made clear that he was in "control" of what
17 information Google collects. He understands this, along with the Chrome Incognito Notice (i.e.,
18 the Incognito splash screen that he reviewed each time he began a private browsing mode session
19 in Chrome), to be the Google Privacy Policy. To the extent Google's defined "Google Privacy
20 Policy" is applicable, it did not provide consent to Google's conduct alleged in the First Amended
21 Complaint. Otherwise Denied.

22 **AMENDED RESPONSE TO REQUEST FOR ADMISSION NO. 2:**

23 Plaintiff Brown objects to this Request as vague and overly broad to the extent Google
24 relies on the undefined, capitalized term "TERMS OF SERVICE," as Plaintiff Brown cannot be
25 expected to guess or speculate as to which "TERMS OF SERVICE" Google might be referring to
26 in this Request. Plaintiff Brown further objects to this Request to the extent it purports to suggest
27 that review of and consent to Google's Privacy Policy is a necessary predicate for any claim in this
28

1 litigation. Plaintiff Brown's allegations relate to Google's conduct of secretly and unlawfully
2 intercepting, collecting data from, analyzing, and monetizing Plaintiff Brown's (and class
3 members') browsing activity conducted in private browsing mode, despite Google's
4 representations (including without limitation in the Incognito private browsing mode) that private
5 browsing mode was private and that Plaintiff Brown's (and class members') private browsing
6 information would not be collected by Google. Users did not need any Google account to browse
7 privately, using Incognito mode or otherwise. Further, to the best of Plaintiff Brown's knowledge,
8 he has never logged into any Google accounts in Chrome when using Chrome's private browsing
9 mode.

10 Notwithstanding and subject to these objections, Plaintiff Brown admits that, when he
11 signed up for his Google Account, although he does not recall the exact details of the then-current
12 Terms of Service, he indicated to Google that he generally agreed to Google's then-current Terms
13 of Service—which incorporates the Google Chrome and Chrome OS Additional Terms of Service,
14 the Chrome Privacy Notice, the Privacy Policy, the "Search & Browse Privately" page, and the
15 Incognito Screen—and he recalls the disclosures promising that Google would not intercept and
16 collect his private browsing activity, and did he not consent to that interception and collection.
17 Otherwise Denied.

18 **REQUEST FOR ADMISSION NO. 3:**

19 Admit that YOU reviewed the GOOGLE PRIVACY POLICY before you first used
20 INCOGNITO MODE.

21 **ORIGINAL RESPONSE TO REQUEST FOR ADMISSION NO. 3:**

22 Plaintiff Brown objects to this Request as vague and overly broad to the extent Google has
23 defined the GOOGLE PRIVACY POLICY to include the policy available at
24 <https://policies.google.com/privacy> "and any prior version of this policy." Plaintiff Brown further
25 objects to this Request to the extent it purports to suggest that review of and consent to Google's
26 Privacy Policy is a necessary predicate for any claim in this litigation. Plaintiff Brown's allegations
27 relate to Google's conduct of secretly and unlawfully intercepting, collecting data from, analyzing,
28

1 and monetizing Plaintiff Brown's (and class members') browsing activity conducted in private
2 browsing mode, despite Google's representations (including without limitation in the Incognito
3 private browsing mode) that private browsing mode was private and that Plaintiff Brown's (and
4 class members') private browsing information would not be collected by Google. Users did not
5 need any Google account to browse privately, using Incognito mode or otherwise. Further, to the
6 best of Plaintiff Brown's knowledge, he has never logged into any Google accounts in Chrome
7 when using Chrome's private browsing mode.

8
9 Notwithstanding and subject to these objections, Plaintiff Brown admits that, at or around
10 the time he opened his Google Account and at times thereafter, he reviewed Google representations
11 that he was in "control" of what information Google collects and could exercise such control by
12 enabling private browsing mode, such as the representations outlined in paragraphs 2 and 42 of
13 the First Amended Complaint. He understands this, along with the Chrome Incognito Notice (i.e.,
14 the Incognito splash screen that he reviewed each time he began a private browsing mode session
15 in Chrome), to be the Google Privacy Policy. To the extent Google's defined "Google Privacy
16 Policy" is applicable, it did not provide consent to Google's conduct alleged in the First Amended
17 Complaint. Otherwise Denied.

18 **AMENDED RESPONSE TO REQUEST FOR ADMISSION NO. 3:**

19 Plaintiff Brown objects to this Request as vague and overly broad to the extent Google has
20 defined the GOOGLE PRIVACY POLICY to include the policy available at
21 <https://policies.google.com/privacy> "and any prior version of this policy." Plaintiff Brown further
22 objects to this Request to the extent it purports to suggest that review of and consent to Google's
23 Privacy Policy is a necessary predicate for any claim in this litigation. Plaintiff Brown's allegations
24 relate to Google's conduct of secretly and unlawfully intercepting, collecting data from, analyzing,
25 and monetizing Plaintiff Brown's (and class members') browsing activity conducted in private
26 browsing mode, despite Google's representations (including without limitation in the Incognito
27 private browsing mode) that private browsing mode was private and that Plaintiff Brown's (and
28 class members') private browsing information would not be collected by Google. Users did not

1 need any Google account to browse privately, using Incognito mode or otherwise. Further, to the
2 best of Plaintiff Brown's knowledge, he has never logged into any Google accounts in Chrome
3 when using Chrome's private browsing mode.

4 Notwithstanding and subject to these objections, Plaintiff Brown admits that he is not sure
5 whether he reviewed the then-current Google Privacy Policy before he first used Incognito Mode,
6 but he did review the Incognito Splash Screen before he first used Incognito Mode and each time
7 thereafter, which did not state that Google would intercept and collect his private browsing
8 activity. Plaintiff Brown did not consent to that interception and collection of his private browsing
9 activity. Otherwise Denied.

10 **REQUEST FOR ADMISSION NO. 4:**

11 Admit that YOU have never indicated to Google that YOU did not agree to the GOOGLE
12 PRIVACY POLICY.

13 **ORIGINAL RESPONSE TO REQUEST FOR ADMISSION NO. 4:**

14 Plaintiff Brown objects to this Request as vague and overly broad to the extent Google has
15 defined the GOOGLE PRIVACY POLICY to include the policy available at
16 <https://policies.google.com/privacy> "and any prior version of this policy." Plaintiff Brown further
17 objects to this Request to the extent it purports to suggest that review of and consent to Google's
18 Privacy Policy is a necessary predicate for any claim in this litigation. Plaintiff Brown's allegations
19 relate to Google's conduct of secretly and unlawfully intercepting, collecting data from, analyzing,
20 and monetizing Plaintiff Brown's (and class members') browsing activity conducted in private
21 browsing mode, despite Google's representations (including without limitation in the Incognito
22 private browsing mode) that private browsing mode was private and that Plaintiff Brown's (and
23 class members') private browsing information would not be collected by Google. Users did not
24 need any Google account to browse privately, using Incognito mode or otherwise. Further, to the
25 best of Plaintiff Brown's knowledge, he has never logged into any Google accounts in Chrome
26 when using Chrome's private browsing mode.

27
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1 Notwithstanding and subject to these objections, Plaintiff Brown admits that, at or around
2 the time he opened his Google Account and at times thereafter, he reviewed Google representations
3 that he was in “control” of what information Google collects and could exercise such control by
4 enabling private browsing mode, such as the representations outlined in paragraphs 2 and 42 of
5 the First Amended Complaint. He understands this, along with the Chrome Incognito Notice (i.e.,
6 the Incognito splash screen that he reviewed each time he began a private browsing mode session
7 in Chrome), to be the Google Privacy Policy. To the extent Google’s defined “Google Privacy
8 Policy” is applicable, it did not provide consent to Google’s conduct alleged in the First Amended
9 Complaint. Otherwise Denied.

10 **AMENDED RESPONSE TO REQUEST FOR ADMISSION NO. 4:**

11 Plaintiff Brown objects to this Request as vague and overly broad to the extent Google has
12 defined the GOOGLE PRIVACY POLICY to include the policy available at
13 <https://policies.google.com/privacy> “and any prior version of this policy.” Plaintiff Brown further
14 objects to this Request to the extent it purports to suggest that review of and consent to Google’s
15 Privacy Policy is a necessary predicate for any claim in this litigation. Plaintiff Brown’s allegations
16 relate to Google’s conduct of secretly and unlawfully intercepting, collecting data from, analyzing,
17 and monetizing Plaintiff Brown’s (and class members’) browsing activity conducted in private
18 browsing mode, despite Google’s representations (including without limitation in the Incognito
19 private browsing mode) that private browsing mode was private and that Plaintiff Brown’s (and
20 class members’) private browsing information would not be collected by Google. Users did not
21 need any Google account to browse privately, using Incognito mode or otherwise. Further, to the
22 best of Plaintiff Brown’s knowledge, he has never logged into any Google accounts in Chrome
23 when using Chrome’s private browsing mode.

24 Notwithstanding and subject to these objections, Plaintiff Brown admits that, prior to filing
25 this lawsuit, he did not indicate to Google that he did not agree to the then-current Google Privacy
26 Policy. However, Google’s Privacy Policy does not disclose Google’s alleged data collection while
27 users are in private browsing mode, and he never consented to Google’s interception and collection
28

1 of his private browsing activity. Plaintiff Brown further states that the filing of this lawsuit put
2 Google on notice that its continued interception and collection of his and Class Members' private
3 browsing activity is without consent and contrary to the law. Otherwise Denied.

4 **REQUEST FOR ADMISSION NO. 5:**

5 Admit that the GOOGLE PRIVACY POLICY discloses that Google collects through its
6 SERVICES the categories of Data that YOUR FAC alleges Google illegally "intercepted." *See*,
7 *e.g.*, FAC ¶¶ 202-17.

8 **RESPONSE TO REQUEST FOR ADMISSION NO. 5:**

9 Denied.

10 **REQUEST FOR ADMISSION NO. 6:**

11 Admit that each GOOGLE PRIVACY POLICY YOU reviewed disclosed that Google
12 collects information about users' visits to websites that use Google's services.

13 **RESPONSE TO REQUEST FOR ADMISSION NO. 6:**

14 Denied.

15 **REQUEST FOR ADMISSION NO. 7:**

16 Admit that the GOOGLE PRIVACY POLICY does not represent that using private
17 browsing mode will prevent Google from receiving information through its SERVICES.

18 **RESPONSE TO REQUEST FOR ADMISSION NO. 7:**

19 Denied.

20 **REQUEST FOR ADMISSION NO. 8:**

21 Admit that, during the CLASS PERIOD, YOU were aware that "Google collects
22 information about the web-browsing activity of users who are not in 'private browsing mode.'" *See* FAC ¶ 163.

23 **RESPONSE TO REQUEST FOR ADMISSION NO. 8:**

24 Plaintiff Brown admits that he was aware that Google was online collecting data
25 sometimes, when he was not browsing in private mode, but did not understand exactly how.
26 Otherwise denied.
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REQUEST FOR ADMISSION NO. 9:

Admit that, when YOU visited websites using Chrome in Incognito mode, YOU were aware that the websites may record data associated with your visit (for example, on the websites' servers), including the webpages YOU viewed.

RESPONSE TO REQUEST FOR ADMISSION NO. 9:

Denied.

REQUEST FOR ADMISSION NO. 10:

Admit that, when YOU visited websites using Chrome in Incognito mode, YOU were aware that your alleged COMMUNICATIONS with the websites might be recorded by the websites (for example, on the websites' servers).

RESPONSE TO REQUEST FOR ADMISSION NO. 10:

Denied.

REQUEST FOR ADMISSION NO. 11:

Admit that, when YOU visited websites using Chrome in Incognito mode, YOU were aware that your alleged COMMUNICATIONS with the websites might be visible to YOUR internet service provider.

RESPONSE TO REQUEST FOR ADMISSION NO. 11:

Denied.

REQUEST FOR ADMISSION NO. 12:

Admit that, during the CLASS PERIOD, you understood the terms "private browsing" and "browse privately" in the Google disclosures that YOU allege YOU reviewed did not mean that your internet browsing activity would be completely private from everyone.

RESPONSE TO REQUEST FOR ADMISSION NO. 12:

Plaintiff Brown admits that, when he visited websites using Chrome in Incognito mode, his activity might still be visible to those websites, his employer or school, and/or his internet service provider. Plaintiff Brown did not, however, consent to Google's interception of that activity. Otherwise denied.

REQUEST FOR ADMISSION NO. 13:

Admit that when YOU browsed the web in Incognito mode, YOU understood that cookies could still be placed on YOUR browser and would be deleted when YOU closed YOUR Incognito window or tab.

RESPONSE TO REQUEST FOR ADMISSION NO. 13:

Denied.

REQUEST FOR ADMISSION NO. 14:

Admit that, when YOU browsed the web in Incognito mode, YOU understood that YOUR activity might still be visible to the websites YOU visited and YOUR internet service provider.

RESPONSE TO REQUEST FOR ADMISSION NO. 14:

Plaintiff Brown admits that, when he visited websites using Chrome in Incognito mode, his activity might still be visible to those websites. Plaintiff Brown further admits that, when he visited websites using Chrome in Incognito mode, his activity might still be visible to his internet service provider. Plaintiff Brown did not, however, consent to Google's interception of that activity. Otherwise Denied.

REQUEST FOR ADMISSION NO. 15:

Admit that the INCOGNITO NOTICE does not represent that Incognito mode prevents Google from collecting the information that you allege Google illegally "intercepted."

RESPONSE TO REQUEST FOR ADMISSION NO. 15:

Denied.

REQUEST FOR ADMISSION NO. 16:

Admit that YOU became "aware that [YOU are] able to sell [YOUR] own personal data, via other websites such as Killi," *see* FAC ¶¶ 170,175, 180, 185, 190, only after YOU retained YOUR counsel in this action.

RESPONSE TO REQUEST FOR ADMISSION NO. 16:

Denied.

REQUEST FOR ADMISSION NO. 17:

1 Admit that Google's alleged conduct has not affected YOUR alleged ability "to sell
2 [YOUR] own personal data, via other websites such as Killi." See FAC ¶¶ 170, 175, 180, 185, 190.

3 **RESPONSE TO REQUEST FOR ADMISSION NO. 17:**

4 Denied.

5 **REQUEST FOR ADMISSION NO. 18:**

6 Admit that YOU did not download and install Google's Analytics Opt-Out Browser Add-
7 on available at <https://tools.google.com/dlpage/gaoptout>.

8 **RESPONSE TO REQUEST FOR ADMISSION NO. 18:**

9 Plaintiff Brown objects to this Request to the extent it purports to suggest that either
10 downloading and/or installing Google's Analytics Opt-Out Browser Add-on is a necessary
11 predicate for any claim in this litigation. Plaintiff Brown's allegations relate to Google's conduct
12 of secretly and unlawfully intercepting, collecting data from, analyzing, and monetizing Plaintiff
13 Brown's (and class members') browsing activity conducted in private browsing mode, despite
14 Google's representations (including without limitation in the Incognito private browsing mode)
15 that private browsing mode was private and that Plaintiff Brown's (and class members') private
16 browsing information would not be collected by Google. Users did not need to download and/or
17 install Google's Analytics Opt-Out Browser to browse privately, using Incognito mode or
18 otherwise.

19 Notwithstanding and subject to these objections, Plaintiff Brown admits that he did not
20 download or install Google's Analytics Opt-Out Browser Add-on, but this did not provide consent
21 to Google's conduct alleged in the First Amended Complaint. Otherwise denied.

22 **REQUEST FOR ADMISSION NO. 19:**

23 Admit that YOU did not change the default cookie settings on your browser.

24 **RESPONSE TO REQUEST FOR ADMISSION NO. 19:**

25 Plaintiff Brown objects to this Request to the extent it purports to suggest that review of
26 changing the "default cookie settings" on the browser is a necessary predicate for any claim in this
27 litigation. Plaintiff Brown's allegations relate to Google's conduct of secretly and unlawfully
28

1 intercepting, collecting data from, analyzing, and monetizing Plaintiff Brown's (and class
2 members') browsing activity conducted in private browsing mode, despite Google's
3 representations (including without limitation in the Incognito private browsing mode) that private
4 browsing mode was private and that Plaintiff Brown's (and class members') private browsing
5 information would not be collected by Google. Users did not need to change the "default cookie
6 settings" on their browser to browse privately, using Incognito mode or otherwise.

7 Notwithstanding and subject to these objections, Plaintiff Brown admits that he did not
8 change the "default cookie settings" on his browser, but this did not provide consent to Google's
9 conduct alleged in the First Amended Complaint. Otherwise denied.

10 **REQUEST FOR ADMISSION NO. 20:**

11 Admit that YOU did not opt out of ad personalization at <https://adssettings.google.com>.

12 **RESPONSE TO REQUEST FOR ADMISSION NO. 20:**

13 Plaintiff Brown objects to this Request to the extent it purports to suggest that opting out
14 of ad personalization at <https://adssettings.google.com> is a necessary predicate for any claim in
15 this litigation. Plaintiff Brown's allegations relate to Google's conduct of secretly and unlawfully
16 intercepting, collecting data from, analyzing, and monetizing Plaintiff Brown's (and class
17 members') browsing activity conducted in private browsing mode, despite Google's
18 representations (including without limitation in the Incognito private browsing mode) that private
19 browsing mode was private and that Plaintiff Brown's (and class members') private browsing
20 information would not be collected by Google. Users did not need to opt out of ad personalization
21 at <https://adssettings.google.com> to browse privately, using Incognito mode or otherwise.

22 Notwithstanding and subject to these objections, Plaintiff Brown admits that he did not opt
23 out of ad personalization at <https://adssettings.google.com>, but this did not provide consent to
24 Google's conduct alleged in the First Amended Complaint. Otherwise denied.

25 **REQUEST FOR ADMISSION NO. 21:**

26 Admit that YOU did not retain any information identifying the cookies Google allegedly
27 set on your browser while YOU were private browsing.
28

RESPONSE TO REQUEST FOR ADMISSION NO. 21:

While browsing privately, Plaintiff Brown admits that he was not aware that Google was placing cookies on his browser, therefore Plaintiff Brown could not have retained any information identifying the cookies Google placed. Plaintiff Brown's claims are about Google Analytics. Any cookie data that is collected by Google would be in Google's possession, and not on Plaintiff Brown's devices. Regardless, Google has yet to disclose to Plaintiff Brown how exactly it is collecting and using Plaintiff Brown's data in private browsing. Otherwise denied.

Dated: May 24, 2021

MORGAN & MORGAN

/s/ John A. Yanchunis

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Ryan J. McGee (*pro hac vice*)
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Attorneys for Plaintiffs

PROOF OF SERVICE

I, Jennifer Cabezas, declare:

I am a citizen of the United States and employed in the County of Hillsborough, Florida. I am over the age of 18 and not a party to the within action; my business address is 201 N. Franklin St., 7th Floor, Tampa, FL 33602.

On May 24, 2021, I served the following document described as:

Plaintiff's Amended Objections and Responses to Defendant's Second Set of Requests for Admission

By electronic mail transmission from jcabezas@forthepeople.com on May 24, 2021, by transmitting a PDF format copy of such document to each person at the e-mail addresses listed below. The document was transmitted by electronic transmission and such transmission was reported as complete and without error:

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24 *Attorneys for Defendant*

25 Executed on May 24, 2021, at Tampa, Florida.

26
27 /s/ Jennifer Cabezas
28 Jennifer Cabezas

EXHIBIT 6

PLAINTIFF WILLIAM BYATT'S AMENDED OBJECTIONS AND RESPONSES TO DEFENDANT'S SECOND SET OF REQUESTS FOR ADMISSION

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

CHASOM BROWN, WILLIAM BYATT,
JEREMY DAVIS, CHRISTOPHER
CASTILLO, and MONIQUE TRUJILLO
individually and on behalf of all other
similarly situated,

Plaintiffs,

v.

GOOGLE LLC,

Defendant.

Case No. 5:20-cv-03664-LHK-SVK

**PLAINTIFF WILLIAM BYATT'S AMENDED OBJECTIONS AND RESPONSES
TO DEFENDANT'S SECOND SET OF REQUESTS FOR ADMISSION**

Pursuant to Federal Rule of Civil Procedure Rule 36, Plaintiff William Byatt ("Byatt") hereby objects and responds to Defendant's, Google LLC ("Google"), Second Set of Requests for Admission (Nos. 2–21). These objections and responses are made solely for the purpose of and in relation to this action. In addition, the objections and responses set forth in this document are based on Plaintiff Byatt's knowledge, investigations, and analysis to date. As discovery proceeds, Plaintiff Byatt may become aware of additional facts or evidence and his analysis of the case may change. Plaintiff Byatt reserves all rights to supplement and amend his objections and responses accordingly.

REQUEST FOR ADMISSION NO. 2:

Admit that, when YOU signed up for YOUR GOOGLE ACCOUNT, YOU indicated to Google that YOU agreed to Google's then-current TERMS OF SERVICE.

ORIGINAL RESPONSE TO REQUEST FOR ADMISSION NO. 2:

Plaintiff Byatt objects to this Request as vague and overly broad to the extent Google relies on the undefined, capitalized term "TERMS OF SERVICE," as Plaintiff Byatt cannot be expected to guess or speculate as to which "TERMS OF SERVICE" Google might be referring to in this

1 Request. Plaintiff Byatt further objects to this Request to the extent it purports to suggest that
2 review of and consent to Google's Privacy Policy is a necessary predicate for any claim in this
3 litigation. Plaintiff Byatt's allegations relate to Google's conduct of secretly and unlawfully
4 intercepting, collecting data from, analyzing, and monetizing Plaintiff Byatt's (and class
5 members') browsing activity conducted in private browsing mode, despite Google's
6 representations (including without limitation in the Incognito private browsing mode) that private
7 browsing mode was private and that Plaintiff Byatt's (and class members') private browsing
8 information would not be collected by Google. Users did not need any Google account to browse
9 privately, using Incognito mode or otherwise. Further, to the best of Plaintiff Byatt's knowledge,
10 he has never logged into any Google accounts in Chrome when using Chrome's private browsing
11 mode.

12 Notwithstanding and subject to these objections, Plaintiff Byatt admits that, at or around
13 the time he opened his Google Account and at times thereafter, he reviewed Google's
14 representations that he was in "control" of what information Google collects and could exercise
15 such control by enabling private browsing mode, such as the representations outlined in paragraphs
16 2 and 42 of the First Amended Complaint, which made clear that he was in "control" of what
17 information Google collects. He understands this, along with the Chrome Incognito Notice (i.e.,
18 the Incognito splash screen that he reviewed each time he began a private browsing mode session
19 in Chrome), to be the Google Privacy Policy. To the extent Google's defined "Google Privacy
20 Policy" is applicable, it did not provide consent to Google's conduct alleged in the First Amended
21 Complaint. Otherwise Denied.

22 **AMENDED RESPONSE TO REQUEST FOR ADMISSION NO. 2:**

23 Plaintiff Byatt objects to this Request as vague and overly broad to the extent Google relies
24 on the undefined, capitalized term "TERMS OF SERVICE," as Plaintiff Byatt cannot be expected
25 to guess or speculate as to which "TERMS OF SERVICE" Google might be referring to in this
26 Request. Plaintiff Byatt further objects to this Request to the extent it purports to suggest that
27 review of and consent to Google's Privacy Policy is a necessary predicate for any claim in this
28

1 litigation. Plaintiff Byatt's allegations relate to Google's conduct of secretly and unlawfully
2 intercepting, collecting data from, analyzing, and monetizing Plaintiff Byatt's (and class
3 members') browsing activity conducted in private browsing mode, despite Google's
4 representations (including without limitation in the Incognito private browsing mode) that private
5 browsing mode was private and that Plaintiff Byatt's (and class members') private browsing
6 information would not be collected by Google. Users did not need any Google account to browse
7 privately, using Incognito mode or otherwise. Further, to the best of Plaintiff Byatt's knowledge,
8 he has never logged into any Google accounts in Chrome when using Chrome's private browsing
9 mode.

10 Notwithstanding and subject to these objections, Plaintiff Byatt admits that, when he signed
11 up for his Google Account, although he does not recall the exact details of the then-current Terms
12 of Service, he indicated to Google that he generally agreed to Google's then-current Terms of
13 Service—which incorporates the Google Chrome and Chrome OS Additional Terms of Service,
14 the Chrome Privacy Notice, the Privacy Policy, the "Search & Browse Privately" page, and the
15 Incognito Screen—and he recalls the disclosures promising that Google would not intercept and
16 collect his private browsing activity, and did he not consent to that interception and collection.
17 Otherwise Denied.

18 **REQUEST FOR ADMISSION NO. 3:**

19 Admit that YOU reviewed the GOOGLE PRIVACY POLICY before you first used
20 INCOGNITO MODE.

21 **ORIGINAL RESPONSE TO REQUEST FOR ADMISSION NO. 3:**

22 Plaintiff Byatt objects to this Request as vague and overly broad to the extent Google has
23 defined the GOOGLE PRIVACY POLICY to include the policy available at
24 <https://policies.google.com/privacy> "and any prior version of this policy." Plaintiff Byatt further
25 objects to this Request to the extent it purports to suggest that review of and consent to Google's
26 Privacy Policy is a necessary predicate for any claim in this litigation. Plaintiff Byatt's allegations
27 relate to Google's conduct of secretly and unlawfully intercepting, collecting data from, analyzing,
28

1 and monetizing Plaintiff Byatt's (and class members') browsing activity conducted in private
2 browsing mode, despite Google's representations (including without limitation in the Incognito
3 private browsing mode) that private browsing mode was private and that Plaintiff Byatt's (and
4 class members') private browsing information would not be collected by Google. Users did not
5 need any Google account to browse privately, using Incognito mode or otherwise. Further, to the
6 best of Plaintiff Byatt's knowledge, he has never logged into any Google accounts in Chrome when
7 using Chrome's private browsing mode.

8
9 Notwithstanding and subject to these objections, Plaintiff Byatt admits that, at or around
10 the time he opened his Google Account and at times thereafter, he reviewed Google representations
11 that he was in "control" of what information Google collects and could exercise such control by
12 enabling private browsing mode, such as the representations outlined in paragraphs 2 and 42 of
13 the First Amended Complaint. He understands this, along with the Chrome Incognito Notice (i.e.,
14 the Incognito splash screen that he reviewed each time he began a private browsing mode session
15 in Chrome), to be the Google Privacy Policy. To the extent Google's defined "Google Privacy
16 Policy" is applicable, it did not provide consent to Google's conduct alleged in the First Amended
17 Complaint. Otherwise Denied.

18 **AMENDED RESPONSE TO REQUEST FOR ADMISSION NO. 3:**

19 Plaintiff Byatt objects to this Request as vague and overly broad to the extent Google has
20 defined the GOOGLE PRIVACY POLICY to include the policy available at
21 <https://policies.google.com/privacy> "and any prior version of this policy." Plaintiff Byatt further
22 objects to this Request to the extent it purports to suggest that review of and consent to Google's
23 Privacy Policy is a necessary predicate for any claim in this litigation. Plaintiff Byatt's allegations
24 relate to Google's conduct of secretly and unlawfully intercepting, collecting data from, analyzing,
25 and monetizing Plaintiff Byatt's (and class members') browsing activity conducted in private
26 browsing mode, despite Google's representations (including without limitation in the Incognito
27 private browsing mode) that private browsing mode was private and that Plaintiff Byatt's (and
28 class members') private browsing information would not be collected by Google. Users did not

1 need any Google account to browse privately, using Incognito mode or otherwise. Further, to the
2 best of Plaintiff Byatt's knowledge, he has never logged into any Google accounts in Chrome when
3 using Chrome's private browsing mode.

4 Notwithstanding and subject to these objections, Plaintiff Byatt admits that he believes that
5 he reviewed the then-current Google Privacy Policy before he first used Incognito Mode, and he
6 recalls reviewing the Incognito Splash Screen before he first used Incognito Mode and each time
7 thereafter, and neither the Google Privacy Policy nor the Incognito Splash Screen stated that
8 Google would intercept and collect his private browsing activity. Plaintiff Byatt did not consent to
9 that interception and collection of his private browsing activity. Otherwise Denied.

10 **REQUEST FOR ADMISSION NO. 4:**

11 Admit that YOU have never indicated to Google that YOU did not agree to the GOOGLE
12 PRIVACY POLICY.

13 **ORIGINAL RESPONSE TO REQUEST FOR ADMISSION NO. 4:**

14 Plaintiff Byatt objects to this Request as vague and overly broad to the extent Google has
15 defined the GOOGLE PRIVACY POLICY to include the policy available at
16 <https://policies.google.com/privacy> "and any prior version of this policy." Plaintiff Byatt further
17 objects to this Request to the extent it purports to suggest that review of and consent to Google's
18 Privacy Policy is a necessary predicate for any claim in this litigation. Plaintiff Byatt's allegations
19 relate to Google's conduct of secretly and unlawfully intercepting, collecting data from, analyzing,
20 and monetizing Plaintiff Byatt's (and class members') browsing activity conducted in private
21 browsing mode, despite Google's representations (including without limitation in the Incognito
22 private browsing mode) that private browsing mode was private and that Plaintiff Byatt's (and
23 class members') private browsing information would not be collected by Google. Users did not
24 need any Google account to browse privately, using Incognito mode or otherwise. Further, to the
25 best of Plaintiff Byatt's knowledge, he has never logged into any Google accounts in Chrome when
26 using Chrome's private browsing mode.

27
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1 Notwithstanding and subject to these objections, Plaintiff Byatt admits that, at or around
2 the time he opened his Google Account and at times thereafter, he reviewed Google representations
3 that he was in “control” of what information Google collects and could exercise such control by
4 enabling private browsing mode, such as the representations outlined in paragraphs 2 and 42 of
5 the First Amended Complaint. He understands this, along with the Chrome Incognito Notice (i.e.,
6 the Incognito splash screen that he reviewed each time he began a private browsing mode session
7 in Chrome), to be the Google Privacy Policy. To the extent Google’s defined “Google Privacy
8 Policy” is applicable, it did not provide consent to Google’s conduct alleged in the First Amended
9 Complaint. Otherwise Denied.

10 **AMENDED RESPONSE TO REQUEST FOR ADMISSION NO. 4:**

11 Plaintiff Byatt objects to this Request as vague and overly broad to the extent Google has
12 defined the GOOGLE PRIVACY POLICY to include the policy available at
13 <https://policies.google.com/privacy> “and any prior version of this policy.” Plaintiff Byatt further
14 objects to this Request to the extent it purports to suggest that review of and consent to Google’s
15 Privacy Policy is a necessary predicate for any claim in this litigation. Plaintiff Byatt’s allegations
16 relate to Google’s conduct of secretly and unlawfully intercepting, collecting data from, analyzing,
17 and monetizing Plaintiff Byatt’s (and class members’) browsing activity conducted in private
18 browsing mode, despite Google’s representations (including without limitation in the Incognito
19 private browsing mode) that private browsing mode was private and that Plaintiff Byatt’s (and
20 class members’) private browsing information would not be collected by Google. Users did not
21 need any Google account to browse privately, using Incognito mode or otherwise. Further, to the
22 best of Plaintiff Byatt’s knowledge, he has never logged into any Google accounts in Chrome when
23 using Chrome’s private browsing mode.

24 Notwithstanding and subject to these objections, Plaintiff Byatt admits that, prior to
25 discovering this lawsuit, Plaintiff Byatt did not indicate to Google that he did not agree to the then-
26 current Google Privacy Policy. However, Google’s Privacy Policy does not disclose Google’s
27 alleged data collection while users are in private browsing mode, and he never consented to
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1 Google's interception and collection of his private browsing activity. Plaintiff Byatt further states
2 that this lawsuit put Google on notice that its continued interception and collection of his and Class
3 Members' private browsing activity is without consent and contrary to the law. Otherwise Denied.

4 **REQUEST FOR ADMISSION NO. 5:**

5 Admit that the GOOGLE PRIVACY POLICY discloses that Google collects through its
6 SERVICES the categories of Data that YOUR FAC alleges Google illegally "intercepted." *See*,
7 *e.g.*, FAC ¶¶ 202-17.

8 **RESPONSE TO REQUEST FOR ADMISSION NO. 5:**

9 Denied.

10 **REQUEST FOR ADMISSION NO. 6:**

11 Admit that each GOOGLE PRIVACY POLICY YOU reviewed disclosed that Google
12 collects information about users' visits to websites that use Google's services.

13 **RESPONSE TO REQUEST FOR ADMISSION NO. 6:**

14 Denied.

15 **REQUEST FOR ADMISSION NO. 7:**

16 Admit that the GOOGLE PRIVACY POLICY does not represent that using private
17 browsing mode will prevent Google from receiving information through its SERVICES.

18 **RESPONSE TO REQUEST FOR ADMISSION NO. 7:**

19 Denied.

20 **REQUEST FOR ADMISSION NO. 8:**

21 Admit that, during the CLASS PERIOD, YOU were aware that "Google collects
22 information about the web-browsing activity of users who are not in 'private browsing mode.'" *See* FAC ¶ 163.

23 **RESPONSE TO REQUEST FOR ADMISSION NO. 8:**

24 Plaintiff Byatt admits that he was aware that Google was online collecting data sometimes,
25 when he was not browsing in private mode, but did not understand exactly how. Otherwise denied.

26 **REQUEST FOR ADMISSION NO. 9:**

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1 Admit that, when YOU visited websites using Chrome in Incognito mode, YOU were
2 aware that the websites may record data associated with your visit (for example, on the websites'
3 servers), including the webpages YOU viewed.

4 **RESPONSE TO REQUEST FOR ADMISSION NO. 9:**

5 Denied.

6 **REQUEST FOR ADMISSION NO. 10:**

7 Admit that, when YOU visited websites using Chrome in Incognito mode, YOU were
8 aware that your alleged COMMUNICATIONS with the websites might be recorded by the
9 websites (for example, on the websites' servers).

10 **RESPONSE TO REQUEST FOR ADMISSION NO. 10:**

11 Denied.

12 **REQUEST FOR ADMISSION NO. 11:**

13 Admit that, when YOU visited websites using Chrome in Incognito mode, YOU were
14 aware that your alleged COMMUNICATIONS with the websites might be visible to YOUR
15 internet service provider.

16 **RESPONSE TO REQUEST FOR ADMISSION NO. 11:**

17 Denied.

18 **REQUEST FOR ADMISSION NO. 12:**

19 Admit that, during the CLASS PERIOD, you understood the terms "private browsing" and
20 "browse privately" in the Google disclosures that YOU allege YOU reviewed did not mean that
21 your internet browsing activity would be completely private from everyone.

22 **RESPONSE TO REQUEST FOR ADMISSION NO. 12:**

23 Plaintiff Byatt admits that, when he visited websites using Chrome in Incognito mode, his
24 activity might still be visible to those websites, his employer or school, and/or his internet service
25 provider. Plaintiff Byatt did not, however, consent to Google's interception of that activity.
26 Otherwise denied.

27 **REQUEST FOR ADMISSION NO. 13:**

28

1 Admit that when YOU browsed the web in Incognito mode, YOU understood that cookies
2 could still be placed on YOUR browser and would be deleted when YOU closed YOUR Incognito
3 window or tab.

4 **RESPONSE TO REQUEST FOR ADMISSION NO. 13:**

5 Denied.

6 **REQUEST FOR ADMISSION NO. 14:**

7 Admit that, when YOU browsed the web in Incognito mode, YOU understood that YOUR
8 activity might still be visible to the websites YOU visited and YOUR internet service provider.

9 **RESPONSE TO REQUEST FOR ADMISSION NO. 14:**

10 Plaintiff Byatt admits that, when he visited websites using Chrome in Incognito mode, his
11 activity might still be visible to those websites. Plaintiff Byatt further admits that, when he visited
12 websites using Chrome in Incognito mode, his activity might still be visible to his internet service
13 provider. Plaintiff Byatt did not, however, consent to Google's interception of that activity.
14 Otherwise Denied.

15 **REQUEST FOR ADMISSION NO. 15:**

16 Admit that the INCOGNITO NOTICE does not represent that Incognito mode prevents
17 Google from collecting the information that you allege Google illegally "intercepted."

18 **RESPONSE TO REQUEST FOR ADMISSION NO. 15:**

19 Denied.

20 **REQUEST FOR ADMISSION NO. 16:**

21 Admit that YOU became "aware that [YOU are] able to sell [YOUR] own personal data,
22 via other websites such as Killi," see FAC ¶¶ 170,175, 180, 185, 190, only after YOU retained
23 YOUR counsel in this action.

24 **RESPONSE TO REQUEST FOR ADMISSION NO. 16:**

25 Denied.

26 **REQUEST FOR ADMISSION NO. 17:**

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1 Admit that Google's alleged conduct has not affected YOUR alleged ability "to sell
2 [YOUR] own personal data, via other websites such as Killi." See FAC ¶¶ 170, 175, 180, 185, 190.

3 **RESPONSE TO REQUEST FOR ADMISSION NO. 17:**

4 Denied.

5 **REQUEST FOR ADMISSION NO. 18:**

6 Admit that YOU did not download and install Google's Analytics Opt-Out Browser Add-
7 on available at <https://tools.google.com/dlpage/gaoptout>.

8 **RESPONSE TO REQUEST FOR ADMISSION NO. 18:**

9 Plaintiff Byatt objects to this Request to the extent it purports to suggest that either
10 downloading and/or installing Google's Analytics Opt-Out Browser Add-on is a necessary
11 predicate for any claim in this litigation. Plaintiff Byatt's allegations relate to Google's conduct of
12 secretly and unlawfully intercepting, collecting data from, analyzing, and monetizing Plaintiff
13 Byatt's (and class members') browsing activity conducted in private browsing mode, despite
14 Google's representations (including without limitation in the Incognito private browsing mode)
15 that private browsing mode was private and that Plaintiff Byatt's (and class members') private
16 browsing information would not be collected by Google. Users did not need to download and/or
17 install Google's Analytics Opt-Out Browser to browse privately, using Incognito mode or
18 otherwise.

19 Notwithstanding and subject to these objections, Plaintiff Byatt admits that he did not
20 download or install Google's Analytics Opt-Out Browser Add-on, but this did not provide consent
21 to Google's conduct alleged in the First Amended Complaint. Otherwise denied.

22 **REQUEST FOR ADMISSION NO. 19:**

23 Admit that YOU did not change the default cookie settings on your browser.

24 **RESPONSE TO REQUEST FOR ADMISSION NO. 19:**

25 Plaintiff Byatt objects to this Request to the extent it purports to suggest that review of
26 changing the "default cookie settings" on the browser is a necessary predicate for any claim in this
27 litigation. Plaintiff Byatt's allegations relate to Google's conduct of secretly and unlawfully
28

1 intercepting, collecting data from, analyzing, and monetizing Plaintiff Byatt's (and class
2 members') browsing activity conducted in private browsing mode, despite Google's
3 representations (including without limitation in the Incognito private browsing mode) that private
4 browsing mode was private and that Plaintiff Byatt's (and class members') private browsing
5 information would not be collected by Google. Users did not need to change the "default cookie
6 settings" on their browser to browse privately, using Incognito mode or otherwise.

7 Notwithstanding and subject to these objections, Plaintiff Byatt admits that he did not
8 change the "default cookie settings" on his browser, but this did not provide consent to Google's
9 conduct alleged in the First Amended Complaint. Otherwise denied.

10 **REQUEST FOR ADMISSION NO. 20:**

11 Admit that YOU did not opt out of ad personalization at <https://adssettings.google.com>.

12 **RESPONSE TO REQUEST FOR ADMISSION NO. 20:**

13 Plaintiff Byatt objects to this Request to the extent it purports to suggest that opting out of
14 ad personalization at <https://adssettings.google.com> is a necessary predicate for any claim in this
15 litigation. Plaintiff Byatt's allegations relate to Google's conduct of secretly and unlawfully
16 intercepting, collecting data from, analyzing, and monetizing Plaintiff Byatt's (and class
17 members') browsing activity conducted in private browsing mode, despite Google's
18 representations (including without limitation in the Incognito private browsing mode) that private
19 browsing mode was private and that Plaintiff Byatt's (and class members') private browsing
20 information would not be collected by Google. Users did not need to opt out of ad personalization
21 at <https://adssettings.google.com> to browse privately, using Incognito mode or otherwise.

22 Notwithstanding and subject to these objections, Plaintiff Byatt admits that he did not opt
23 out of ad personalization at <https://adssettings.google.com>, but this did not provide consent to
24 Google's conduct alleged in the First Amended Complaint. Otherwise denied.

25 **REQUEST FOR ADMISSION NO. 21:**

26 Admit that YOU did not retain any information identifying the cookies Google allegedly
27 set on your browser while YOU were private browsing.
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RESPONSE TO REQUEST FOR ADMISSION NO. 21:

While browsing privately, Plaintiff Byatt admits that he was not aware that Google was placing cookies on his browser, therefore Plaintiff Byatt could not have retained any information identifying the cookies Google placed. Plaintiff Byatt's claims are about Google Analytics. Any cookie data that is collected by Google would be in Google's possession, and not on Plaintiff Byatt's devices. Regardless, Google has yet to disclose to Plaintiff Byatt how exactly it is collecting and using Plaintiff Byatt's data in private browsing. Otherwise denied.

Dated: May 24, 2021

MORGAN & MORGAN

/s/ John A. Yanchunis

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Ryan J. McGee (*pro hac vice*)
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Attorneys for Plaintiffs

PROOF OF SERVICE

I, Jennifer Cabezas, declare:

I am a citizen of the United States and employed in the County of Hillsborough, Florida. I am over the age of 18 and not a party to the within action; my business address is 201 N. Franklin St., 7th Floor, Tampa, FL 33602.

On May 24, 2021, I served the following document described as:

Plaintiff's Amended Objections and Responses to Defendant's Second Set of Requests for Admission

By electronic mail transmission from jcabezas@forthepeople.com on May 24, 2021, by transmitting a PDF format copy of such document to each person at the e-mail addresses listed below. The document was transmitted by electronic transmission and such transmission was reported as complete and without error:

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23 jonathantse@quinnemanuel.com

24 *Attorneys for Defendant*

25 Executed on May 24, 2021, at Tampa, Florida.

26
27 /s/ Jennifer Cabezas
28 Jennifer Cabezas

EXHIBIT 7

PLAINTIFF CHRISTOPHER CASTILLO'S AMENDED OBJECTIONS AND RESPONSES TO DEFENDANT'S SECOND SET OF REQUESTS FOR ADMISSION

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

CHASOM BROWN, WILLIAM BYATT,
JEREMY DAVIS, CHRISTOPHER
CASTILLO, and MONIQUE TRUJILLO
individually and on behalf of all other
similarly situated,

Plaintiffs,

v.

GOOGLE LLC,

Defendant.

Case No. 5:20-cv-03664-LHK-SVK

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**PLAINTIFF CHRISTOPHER CASTILLO’S AMENDED OBJECTIONS AND
RESPONSES TO DEFENDANT’S SECOND SET OF REQUESTS FOR ADMISSION**

Pursuant to Federal Rule of Civil Procedure Rule 36, Plaintiff Christopher Castillo (“Castillo”) hereby objects and responds to Defendant’s, Google LLC (“Google”), Second Set of Requests for Admission (Nos. 2–21). These objections and responses are made solely for the purpose of and in relation to this action. In addition, the objections and responses set forth in this document are based on Plaintiff Castillo’s knowledge, investigations, and analysis to date. As discovery proceeds, Plaintiff Castillo may become aware of additional facts or evidence and his analysis of the case may change. Plaintiff Castillo reserves all rights to supplement and amend his objections and responses accordingly.

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REQUEST FOR ADMISSION NO. 2:

Admit that, when YOU signed up for YOUR GOOGLE ACCOUNT, YOU indicated to Google that YOU agreed to Google’s then-current TERMS OF SERVICE.

ORIGINAL RESPONSE TO REQUEST FOR ADMISSION NO. 2:

Plaintiff Castillo objects to this Request as vague and overly broad to the extent Google relies on the undefined, capitalized term “TERMS OF SERVICE,” as Plaintiff Castillo cannot be expected to guess or speculate as to which “TERMS OF SERVICE” Google might be referring to

1 in this Request. Plaintiff Castillo further objects to this Request to the extent it purports to suggest
2 that review of and consent to Google's Privacy Policy is a necessary predicate for any claim in this
3 litigation. Plaintiff Castillo's allegations relate to Google's conduct of secretly and unlawfully
4 intercepting, collecting data from, analyzing, and monetizing Plaintiff Castillo's (and class
5 members') browsing activity conducted in private browsing mode, despite Google's
6 representations (including without limitation in the Incognito private browsing mode) that private
7 browsing mode was private and that Plaintiff Castillo's (and class members') private browsing
8 information would not be collected by Google. Users did not need any Google account to browse
9 privately, using Incognito mode or otherwise. Further, to the best of Plaintiff Castillo's knowledge,
10 he has never logged into any Google accounts in Chrome when using Chrome's private browsing
11 mode.

12 Notwithstanding and subject to these objections, Plaintiff Castillo admits that, at or around
13 the time he opened his Google Account and at times thereafter, he reviewed Google's
14 representations that he was in "control" of what information Google collects and could exercise
15 such control by enabling private browsing mode, such as the representations outlined in paragraphs
16 2 and 42 of the First Amended Complaint, which made clear that he was in "control" of what
17 information Google collects. He understands this, along with the Chrome Incognito Notice (i.e.,
18 the Incognito splash screen that he reviewed each time he began a private browsing mode session
19 in Chrome), to be the Google Privacy Policy. To the extent Google's defined "Google Privacy
20 Policy" is applicable, it did not provide consent to Google's conduct alleged in the First Amended
21 Complaint. Otherwise Denied.

22 **AMENDED RESPONSE TO REQUEST FOR ADMISSION NO. 2:**

23 Plaintiff Castillo objects to this Request as vague and overly broad to the extent Google
24 relies on the undefined, capitalized term "TERMS OF SERVICE," as Plaintiff Castillo cannot be
25 expected to guess or speculate as to which "TERMS OF SERVICE" Google might be referring to
26 in this Request. Plaintiff Castillo further objects to this Request to the extent it purports to suggest
27 that review of and consent to Google's Privacy Policy is a necessary predicate for any claim in this
28

1 litigation. Plaintiff Castillo's allegations relate to Google's conduct of secretly and unlawfully
2 intercepting, collecting data from, analyzing, and monetizing Plaintiff Castillo's (and class
3 members') browsing activity conducted in private browsing mode, despite Google's
4 representations (including without limitation in the Incognito private browsing mode) that private
5 browsing mode was private and that Plaintiff Castillo's (and class members') private browsing
6 information would not be collected by Google. Users did not need any Google account to browse
7 privately, using Incognito mode or otherwise. Further, to the best of Plaintiff Castillo's knowledge,
8 he has never logged into any Google accounts in Chrome when using Chrome's private browsing
9 mode.

10 Notwithstanding and subject to these objections, Plaintiff Castillo admits that, when he
11 signed up for his Google Account, although he does not recall the exact details of the then-current
12 Terms of Service, he indicated to Google that he generally agreed to Google's then-current Terms
13 of Service—which incorporates the Google Chrome and Chrome OS Additional Terms of Service,
14 the Chrome Privacy Notice, the Privacy Policy, the "Search & Browse Privately" page, and the
15 Incognito Screen—and he recalls the disclosures promising that Google would not intercept and
16 collect his private browsing activity, and did he not consent to that interception and collection.
17 Otherwise Denied.

18 **REQUEST FOR ADMISSION NO. 3:**

19 Admit that YOU reviewed the GOOGLE PRIVACY POLICY before you first used
20 INCOGNITO MODE.

21 **ORIGINAL RESPONSE TO REQUEST FOR ADMISSION NO. 3:**

22 Plaintiff Castillo objects to this Request as vague and overly broad to the extent Google
23 has defined the GOOGLE PRIVACY POLICY to include the policy available at
24 <https://policies.google.com/privacy> "and any prior version of this policy." Plaintiff Castillo further
25 objects to this Request to the extent it purports to suggest that review of and consent to Google's
26 Privacy Policy is a necessary predicate for any claim in this litigation. Plaintiff Castillo's
27 allegations relate to Google's conduct of secretly and unlawfully intercepting, collecting data from,
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1 analyzing, and monetizing Plaintiff Castillo's (and class members') browsing activity conducted
2 in private browsing mode, despite Google's representations (including without limitation in the
3 Incognito private browsing mode) that private browsing mode was private and that Plaintiff
4 Castillo's (and class members') private browsing information would not be collected by Google.
5 Users did not need any Google account to browse privately, using Incognito mode or otherwise.
6 Further, to the best of Plaintiff Castillo's knowledge, he has never logged into any Google accounts
7 in Chrome when using Chrome's private browsing mode.

8
9 Notwithstanding and subject to these objections, Plaintiff Castillo admits that, at or around
10 the time he opened his Google Account and at times thereafter, he reviewed Google representations
11 that he was in "control" of what information Google collects and could exercise such control by
12 enabling private browsing mode, such as the representations outlined in paragraphs 2 and 42 of
13 the First Amended Complaint. He understands this, along with the Chrome Incognito Notice (i.e.,
14 the Incognito splash screen that he reviewed each time he began a private browsing mode session
15 in Chrome), to be the Google Privacy Policy. To the extent Google's defined "Google Privacy
16 Policy" is applicable, it did not provide consent to Google's conduct alleged in the First Amended
17 Complaint. Otherwise Denied.

18 **AMENDED RESPONSE TO REQUEST FOR ADMISSION NO. 3:**

19 Plaintiff Castillo objects to this Request as vague and overly broad to the extent Google
20 has defined the GOOGLE PRIVACY POLICY to include the policy available at
21 <https://policies.google.com/privacy> "and any prior version of this policy." Plaintiff Castillo further
22 objects to this Request to the extent it purports to suggest that review of and consent to Google's
23 Privacy Policy is a necessary predicate for any claim in this litigation. Plaintiff Castillo's
24 allegations relate to Google's conduct of secretly and unlawfully intercepting, collecting data from,
25 analyzing, and monetizing Plaintiff Castillo's (and class members') browsing activity conducted
26 in private browsing mode, despite Google's representations (including without limitation in the
27 Incognito private browsing mode) that private browsing mode was private and that Plaintiff
28 Castillo's (and class members') private browsing information would not be collected by Google.

1 Users did not need any Google account to browse privately, using Incognito mode or otherwise.
2 Further, to the best of Plaintiff Castillo's knowledge, he has never logged into any Google accounts
3 in Chrome when using Chrome's private browsing mode.

4 Notwithstanding and subject to these objections, Plaintiff Castillo admits that he believes
5 that he reviewed the then-current Google Privacy Policy before he first used Incognito Mode, and
6 he recalls reviewing the Incognito Splash Screen before he first used Incognito Mode and each
7 time thereafter, and neither the Google Privacy Policy nor the Incognito Splash Screen stated that
8 Google would intercept and collect his private browsing activity. Plaintiff Castillo did not consent
9 to that interception and collection of his private browsing activity. Otherwise Denied.

10 **REQUEST FOR ADMISSION NO. 4:**

11 Admit that YOU have never indicated to Google that YOU did not agree to the GOOGLE
12 PRIVACY POLICY.

13 **ORIGINAL RESPONSE TO REQUEST FOR ADMISSION NO. 4:**

14 Plaintiff Castillo objects to this Request as vague and overly broad to the extent Google
15 has defined the GOOGLE PRIVACY POLICY to include the policy available at
16 <https://policies.google.com/privacy> "and any prior version of this policy." Plaintiff Castillo further
17 objects to this Request to the extent it purports to suggest that review of and consent to Google's
18 Privacy Policy is a necessary predicate for any claim in this litigation. Plaintiff Castillo's
19 allegations relate to Google's conduct of secretly and unlawfully intercepting, collecting data from,
20 analyzing, and monetizing Plaintiff Castillo's (and class members') browsing activity conducted
21 in private browsing mode, despite Google's representations (including without limitation in the
22 Incognito private browsing mode) that private browsing mode was private and that Plaintiff
23 Castillo's (and class members') private browsing information would not be collected by Google.
24 Users did not need any Google account to browse privately, using Incognito mode or otherwise.
25 Further, to the best of Plaintiff Castillo's knowledge, he has never logged into any Google accounts
26 in Chrome when using Chrome's private browsing mode.
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1 Notwithstanding and subject to these objections, Plaintiff Castillo admits that, at or around
2 the time he opened his Google Account and at times thereafter, he reviewed Google representations
3 that he was in “control” of what information Google collects and could exercise such control by
4 enabling private browsing mode, such as the representations outlined in paragraphs 2 and 42 of
5 the First Amended Complaint. He understands this, along with the Chrome Incognito Notice (i.e.,
6 the Incognito splash screen that he reviewed each time he began a private browsing mode session
7 in Chrome), to be the Google Privacy Policy. To the extent Google’s defined “Google Privacy
8 Policy” is applicable, it did not provide consent to Google’s conduct alleged in the First Amended
9 Complaint. Otherwise Denied.

10 **AMENDED RESPONSE TO REQUEST FOR ADMISSION NO. 4:**

11 Plaintiff Castillo objects to this Request as vague and overly broad to the extent Google
12 has defined the GOOGLE PRIVACY POLICY to include the policy available at
13 <https://policies.google.com/privacy> “and any prior version of this policy.” Plaintiff Castillo further
14 objects to this Request to the extent it purports to suggest that review of and consent to Google’s
15 Privacy Policy is a necessary predicate for any claim in this litigation. Plaintiff Castillo’s
16 allegations relate to Google’s conduct of secretly and unlawfully intercepting, collecting data from,
17 analyzing, and monetizing Plaintiff Castillo’s (and class members’) browsing activity conducted
18 in private browsing mode, despite Google’s representations (including without limitation in the
19 Incognito private browsing mode) that private browsing mode was private and that Plaintiff
20 Castillo’s (and class members’) private browsing information would not be collected by Google.
21 Users did not need any Google account to browse privately, using Incognito mode or otherwise.
22 Further, to the best of Plaintiff Castillo’s knowledge, he has never logged into any Google accounts
23 in Chrome when using Chrome’s private browsing mode.

24 Notwithstanding and subject to these objections, Plaintiff Castillo admits that, prior to
25 discovering this lawsuit, Plaintiff Castillo did not indicate to Google that he did not agree to the
26 then-current Google Privacy Policy. However, Google’s Privacy Policy does not disclose Google’s
27 alleged data collection while users are in private browsing mode, and he never consented to
28

1 Google's interception and collection of his private browsing activity. Plaintiff Castillo further
2 states that this lawsuit put Google on notice that its continued interception and collection of his
3 and Class Members' private browsing activity is without consent and contrary to the law.
4 Otherwise Denied.

5 **REQUEST FOR ADMISSION NO. 5:**

6 Admit that the GOOGLE PRIVACY POLICY discloses that Google collects through its
7 SERVICES the categories of Data that YOUR FAC alleges Google illegally "intercepted." *See*,
8 *e.g.*, FAC ¶¶ 202-17.

9 **RESPONSE TO REQUEST FOR ADMISSION NO. 5:**

10 Denied.

11 **REQUEST FOR ADMISSION NO. 6:**

12 Admit that each GOOGLE PRIVACY POLICY YOU reviewed disclosed that Google
13 collects information about users' visits to websites that use Google's services.

14 **RESPONSE TO REQUEST FOR ADMISSION NO. 6:**

15 Denied.

16 **REQUEST FOR ADMISSION NO. 7:**

17 Admit that the GOOGLE PRIVACY POLICY does not represent that using private
18 browsing mode will prevent Google from receiving information through its SERVICES.

19 **RESPONSE TO REQUEST FOR ADMISSION NO. 7:**

20 Denied.

21 **REQUEST FOR ADMISSION NO. 8:**

22 Admit that, during the CLASS PERIOD, YOU were aware that "Google collects
23 information about the web-browsing activity of users who are not in 'private browsing mode.'" *See* FAC ¶ 163.

24 **RESPONSE TO REQUEST FOR ADMISSION NO. 8:**
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1 Plaintiff Castillo admits that he was aware that Google was online collecting data
2 sometimes, when he was not browsing in private mode, but did not understand exactly how.
3 Otherwise denied.

4 **REQUEST FOR ADMISSION NO. 9:**

5 Admit that, when YOU visited websites using Chrome in Incognito mode, YOU were
6 aware that the websites may record data associated with your visit (for example, on the websites'
7 servers), including the webpages YOU viewed.

8 **RESPONSE TO REQUEST FOR ADMISSION NO. 9:**

9 Denied.

10 **REQUEST FOR ADMISSION NO. 10:**

11 Admit that, when YOU visited websites using Chrome in Incognito mode, YOU were
12 aware that your alleged COMMUNICATIONS with the websites might be recorded by the
13 websites (for example, on the websites' servers).

14 **RESPONSE TO REQUEST FOR ADMISSION NO. 10:**

15 Denied.

16 **REQUEST FOR ADMISSION NO. 11:**

17 Admit that, when YOU visited websites using Chrome in Incognito mode, YOU were
18 aware that your alleged COMMUNICATIONS with the websites might be visible to YOUR
19 internet service provider.

20 **RESPONSE TO REQUEST FOR ADMISSION NO. 11:**

21 Denied.

22 **REQUEST FOR ADMISSION NO. 12:**

23 Admit that, during the CLASS PERIOD, you understood the terms "private browsing" and
24 "browse privately" in the Google disclosures that YOU allege YOU reviewed did not mean that
25 your internet browsing activity would be completely private from everyone.

26 **RESPONSE TO REQUEST FOR ADMISSION NO. 12:**

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1 Plaintiff Castillo admits that, when he visited websites using Chrome in Incognito mode,
2 his activity might still be visible to those websites, his employer or school, and/or his internet
3 service provider. Plaintiff Castillo did not, however, consent to Google's interception of that
4 activity. Otherwise denied.

5 **REQUEST FOR ADMISSION NO. 13:**

6 Admit that when YOU browsed the web in Incognito mode, YOU understood that cookies
7 could still be placed on YOUR browser and would be deleted when YOU closed YOUR Incognito
8 window or tab.

9 **RESPONSE TO REQUEST FOR ADMISSION NO. 13:**

10 Denied.

11 **REQUEST FOR ADMISSION NO. 14:**

12 Admit that, when YOU browsed the web in Incognito mode, YOU understood that YOUR
13 activity might still be visible to the websites YOU visited and YOUR internet service provider.

14 **RESPONSE TO REQUEST FOR ADMISSION NO. 14:**

15 Plaintiff Castillo admits that, when he visited websites using Chrome in Incognito mode,
16 his activity might still be visible to those websites. Plaintiff Castillo further admits that, when he
17 visited websites using Chrome in Incognito mode, his activity might still be visible to his internet
18 service provider. Plaintiff Castillo did not, however, consent to Google's interception of that
19 activity. Otherwise Denied.

20 **REQUEST FOR ADMISSION NO. 15:**

21 Admit that the INCOGNITO NOTICE does not represent that Incognito mode prevents
22 Google from collecting the information that you allege Google illegally "intercepted."

23 **RESPONSE TO REQUEST FOR ADMISSION NO. 15:**

24 Denied.

25 **REQUEST FOR ADMISSION NO. 16:**
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1 Admit that YOU became “aware that [YOU are] able to sell [YOUR] own personal data,
2 via other websites such as Killi,” *see* FAC ¶¶ 170,175, 180, 185, 190, only after YOU retained
3 YOUR counsel in this action.

4 **RESPONSE TO REQUEST FOR ADMISSION NO. 16:**

5 Denied.

6 **REQUEST FOR ADMISSION NO. 17:**

7 Admit that Google’s alleged conduct has not affected YOUR alleged ability “to sell
8 [YOUR] own personal data, via other websites such as Killi.” *See* FAC ¶¶ 170, 175, 180, 185, 190.

9 **RESPONSE TO REQUEST FOR ADMISSION NO. 17:**

10 Denied.

11 **REQUEST FOR ADMISSION NO. 18:**

12 Admit that YOU did not download and install Google’s Analytics Opt-Out Browser Add-
13 on available at <https://tools.google.com/dlpage/gaoptout>.

14 **RESPONSE TO REQUEST FOR ADMISSION NO. 18:**

15 Plaintiff Castillo objects to this Request to the extent it purports to suggest that either
16 downloading and/or installing Google’s Analytics Opt-Out Browser Add-on is a necessary
17 predicate for any claim in this litigation. Plaintiff Castillo’s allegations relate to Google’s conduct
18 of secretly and unlawfully intercepting, collecting data from, analyzing, and monetizing Plaintiff
19 Castillo’s (and class members’) browsing activity conducted in private browsing mode, despite
20 Google’s representations (including without limitation in the Incognito private browsing mode)
21 that private browsing mode was private and that Plaintiff Castillo’s (and class members’) private
22 browsing information would not be collected by Google. Users did not need to download and/or
23 install Google’s Analytics Opt-Out Browser to browse privately, using Incognito mode or
24 otherwise.

25 Notwithstanding and subject to these objections, Plaintiff Castillo admits that he did not
26 download or install Google’s Analytics Opt-Out Browser Add-on, but this did not provide consent
27 to Google’s conduct alleged in the First Amended Complaint. Otherwise denied.
28

REQUEST FOR ADMISSION NO. 19:

Admit that YOU did not change the default cookie settings on your browser.

RESPONSE TO REQUEST FOR ADMISSION NO. 19:

Plaintiff Castillo objects to this Request to the extent it purports to suggest that review of changing the “default cookie settings” on the browser is a necessary predicate for any claim in this litigation. Plaintiff Castillo’s allegations relate to Google’s conduct of secretly and unlawfully intercepting, collecting data from, analyzing, and monetizing Plaintiff Castillo’s (and class members’) browsing activity conducted in private browsing mode, despite Google’s representations (including without limitation in the Incognito private browsing mode) that private browsing mode was private and that Plaintiff Castillo’s (and class members’) private browsing information would not be collected by Google. Users did not need to change the “default cookie settings” on their browser to browse privately, using Incognito mode or otherwise.

Notwithstanding and subject to these objections, Plaintiff Castillo admits that he did not change the “default cookie settings” on his browser, but this did not provide consent to Google’s conduct alleged in the First Amended Complaint. Otherwise denied.

REQUEST FOR ADMISSION NO. 20:

Admit that YOU did not opt out of ad personalization at <https://adssettings.google.com>.

RESPONSE TO REQUEST FOR ADMISSION NO. 20:

Plaintiff Castillo objects to this Request to the extent it purports to suggest that opting out of ad personalization at <https://adssettings.google.com> is a necessary predicate for any claim in this litigation. Plaintiff Castillo’s allegations relate to Google’s conduct of secretly and unlawfully intercepting, collecting data from, analyzing, and monetizing Plaintiff Castillo’s (and class members’) browsing activity conducted in private browsing mode, despite Google’s representations (including without limitation in the Incognito private browsing mode) that private browsing mode was private and that Plaintiff Castillo’s (and class members’) private browsing information would not be collected by Google. Users did not need to opt out of ad personalization at <https://adssettings.google.com> to browse privately, using Incognito mode or otherwise.

1 Notwithstanding and subject to these objections, Plaintiff Castillo admits that he did not
2 opt out of ad personalization at <https://adssettings.google.com>, but this did not provide consent to
3 Google's conduct alleged in the First Amended Complaint. Otherwise denied.

4 **REQUEST FOR ADMISSION NO. 21:**

5 Admit that YOU did not retain any information identifying the cookies Google allegedly
6 set on your browser while YOU were private browsing.

7 **RESPONSE TO REQUEST FOR ADMISSION NO. 21:**

8 While browsing privately, Plaintiff Castillo admits that he was not aware that Google was
9 placing cookies on his browser, therefore Plaintiff Castillo could not have retained any information
10 identifying the cookies Google placed. Plaintiff Castillo's claims are about Google Analytics. Any
11 cookie data that is collected by Google would be in Google's possession, and not on Plaintiff
12 Castillo's devices. Regardless, Google has yet to disclose to Plaintiff Castillo how exactly it is
13 collecting and using Plaintiff Castillo's data in private browsing. Otherwise denied.

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Dated: May 24, 2021

MORGAN & MORGAN

/s/ John A. Yanchunis

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PROOF OF SERVICE

I, Jennifer Cabezas, declare:

I am a citizen of the United States and employed in the County of Hillsborough, Florida. I am over the age of 18 and not a party to the within action; my business address is 201 N. Franklin St., 7th Floor, Tampa, FL 33602.

On May 24, 2021, I served the following document described as:

Plaintiff's Amended Objections and Responses to Defendant's Second Set of Requests for Admission

By electronic mail transmission from jcabezas@forthepeople.com on May 24, 2021, by transmitting a PDF format copy of such document to each person at the e-mail addresses listed below. The document was transmitted by electronic transmission and such transmission was reported as complete and without error:

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24 *Attorneys for Defendant*

25 Executed on May 24, 2021, at Tampa, Florida.

26
27 /s/ Jennifer Cabezas
28 Jennifer Cabezas

EXHIBIT 8

PLAINTIFF JEREMY DAVIS' AMENDED OBJECTIONS AND RESPONSES TO DEFENDANT'S SECOND SET OF REQUESTS FOR ADMISSION

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

CHASOM BROWN, WILLIAM BYATT,
JEREMY DAVIS, CHRISTOPHER
CASTILLO, and MONIQUE TRUJILLO
individually and on behalf of all other
similarly situated,

Plaintiffs,

v.

GOOGLE LLC,

Defendant.

Case No. 5:20-cv-03664-LHK-SVK

**PLAINTIFF JEREMY DAVIS' AMENDED OBJECTIONS AND RESPONSES
TO DEFENDANT'S SECOND SET OF REQUESTS FOR ADMISSION**

Pursuant to Federal Rule of Civil Procedure Rule 36, Plaintiff Jeremy Davis ("Davis") hereby objects and responds to Defendant's, Google LLC ("Google"), Second Set of Requests for Admission (Nos. 2–21). These objections and responses are made solely for the purpose of and in relation to this action. In addition, the objections and responses set forth in this document are based on Plaintiff Davis' knowledge, investigations, and analysis to date. As discovery proceeds, Plaintiff Davis may become aware of additional facts or evidence and his analysis of the case may change. Plaintiff Davis reserves all rights to supplement and amend his objections and responses accordingly.

REQUEST FOR ADMISSION NO. 2:

Admit that, when YOU signed up for YOUR GOOGLE ACCOUNT, YOU indicated to Google that YOU agreed to Google's then-current TERMS OF SERVICE.

ORIGINAL RESPONSE TO REQUEST FOR ADMISSION NO. 2:

Plaintiff Davis objects to this Request as vague and overly broad to the extent Google relies on the undefined, capitalized term "TERMS OF SERVICE," as Plaintiff Davis cannot be expected to guess or speculate as to which "TERMS OF SERVICE" Google might be referring to in this

1 Request. Plaintiff Davis further objects to this Request to the extent it purports to suggest that
2 review of and consent to Google's Privacy Policy is a necessary predicate for any claim in this
3 litigation. Plaintiff Davis' allegations relate to Google's conduct of secretly and unlawfully
4 intercepting, collecting data from, analyzing, and monetizing Plaintiff Davis' (and class members')
5 browsing activity conducted in private browsing mode, despite Google's representations
6 (including without limitation in the Incognito private browsing mode) that private browsing mode
7 was private and that Plaintiff Davis' (and class members') private browsing information would not
8 be collected by Google. Users did not need any Google account to browse privately, using
9 Incognito mode or otherwise. Further, to the best of Plaintiff Davis' knowledge, he has never
10 logged into any Google accounts in Chrome when using Chrome's private browsing mode.

11 Notwithstanding and subject to these objections, Plaintiff Davis admits that, at or around
12 the time he opened his Google Account and at times thereafter, he reviewed Google's
13 representations that he was in "control" of what information Google collects and could exercise
14 such control by enabling private browsing mode, such as the representations outlined in paragraphs
15 2 and 42 of the First Amended Complaint, which made clear that he was in "control" of what
16 information Google collects. He understands this, along with the Chrome Incognito Notice (i.e.,
17 the Incognito splash screen that he reviewed each time he began a private browsing mode session
18 in Chrome), to be the Google Privacy Policy. To the extent Google's defined "Google Privacy
19 Policy" is applicable, it did not provide consent to Google's conduct alleged in the First Amended
20 Complaint. Otherwise Denied.

21 **AMENDED RESPONSE TO REQUEST FOR ADMISSION NO. 2:**

22 Plaintiff Davis objects to this Request as vague and overly broad to the extent Google relies
23 on the undefined, capitalized term "TERMS OF SERVICE," as Plaintiff Davis cannot be expected
24 to guess or speculate as to which "TERMS OF SERVICE" Google might be referring to in this
25 Request. Plaintiff Davis further objects to this Request to the extent it purports to suggest that
26 review of and consent to Google's Privacy Policy is a necessary predicate for any claim in this
27 litigation. Plaintiff Davis' allegations relate to Google's conduct of secretly and unlawfully
28

1 intercepting, collecting data from, analyzing, and monetizing Plaintiff Davis' (and class members')
2 browsing activity conducted in private browsing mode, despite Google's representations
3 (including without limitation in the Incognito private browsing mode) that private browsing mode
4 was private and that Plaintiff Davis' (and class members') private browsing information would not
5 be collected by Google. Users did not need any Google account to browse privately, using
6 Incognito mode or otherwise. Further, to the best of Plaintiff Davis' knowledge, he has never
7 logged into any Google accounts in Chrome when using Chrome's private browsing mode.

8
9 Notwithstanding and subject to these objections, Plaintiff Davis admits that, when he
10 signed up for his Google Account, although he does not recall the exact details of the then-current
11 Terms of Service, he indicated to Google that he generally agreed to Google's then-current Terms
12 of Service—which incorporates the Google Chrome and Chrome OS Additional Terms of Service,
13 the Chrome Privacy Notice, the Privacy Policy, the "Search & Browse Privately" page, and the
14 Incognito Screen—and he recalls the disclosures promising that Google would not intercept and
15 collect his private browsing activity, and did he not consent to that interception and collection.
16 Otherwise Denied.

17 **REQUEST FOR ADMISSION NO. 3:**

18 Admit that YOU reviewed the GOOGLE PRIVACY POLICY before you first used
19 INCOGNITO MODE.

20 **ORIGINAL RESPONSE TO REQUEST FOR ADMISSION NO. 3:**

21 Plaintiff Davis objects to this Request as vague and overly broad to the extent Google has
22 defined the GOOGLE PRIVACY POLICY to include the policy available at
23 <https://policies.google.com/privacy> "and any prior version of this policy." Plaintiff Davis further
24 objects to this Request to the extent it purports to suggest that review of and consent to Google's
25 Privacy Policy is a necessary predicate for any claim in this litigation. Plaintiff Davis' allegations
26 relate to Google's conduct of secretly and unlawfully intercepting, collecting data from, analyzing,
27 and monetizing Plaintiff Davis' (and class members') browsing activity conducted in private
28 browsing mode, despite Google's representations (including without limitation in the Incognito

1 private browsing mode) that private browsing mode was private and that Plaintiff Davis' (and class
2 members') private browsing information would not be collected by Google. Users did not need
3 any Google account to browse privately, using Incognito mode or otherwise. Further, to the best
4 of Plaintiff Davis' knowledge, he has never logged into any Google accounts in Chrome when
5 using Chrome's private browsing mode.

6 Notwithstanding and subject to these objections, Plaintiff Davis admits that, at or around
7 the time he opened his Google Account and at times thereafter, he reviewed Google representations
8 that he was in "control" of what information Google collects and could exercise such control by
9 enabling private browsing mode, such as the representations outlined in paragraphs 2 and 42 of
10 the First Amended Complaint. He understands this, along with the Chrome Incognito Notice (i.e.,
11 the Incognito splash screen that he reviewed each time he began a private browsing mode session
12 in Chrome), to be the Google Privacy Policy. To the extent Google's defined "Google Privacy
13 Policy" is applicable, it did not provide consent to Google's conduct alleged in the First Amended
14 Complaint. Otherwise Denied.

15 **AMENDED RESPONSE TO REQUEST FOR ADMISSION NO. 3:**

16 Plaintiff Davis objects to this Request as vague and overly broad to the extent Google has
17 defined the GOOGLE PRIVACY POLICY to include the policy available at
18 <https://policies.google.com/privacy> "and any prior version of this policy." Plaintiff Davis further
19 objects to this Request to the extent it purports to suggest that review of and consent to Google's
20 Privacy Policy is a necessary predicate for any claim in this litigation. Plaintiff Davis' allegations
21 relate to Google's conduct of secretly and unlawfully intercepting, collecting data from, analyzing,
22 and monetizing Plaintiff Davis' (and class members') browsing activity conducted in private
23 browsing mode, despite Google's representations (including without limitation in the Incognito
24 private browsing mode) that private browsing mode was private and that Plaintiff Davis' (and class
25 members') private browsing information would not be collected by Google. Users did not need
26 any Google account to browse privately, using Incognito mode or otherwise. Further, to the best
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1 of Plaintiff Davis' knowledge, he has never logged into any Google accounts in Chrome when
2 using Chrome's private browsing mode.

3 Notwithstanding and subject to these objections, Plaintiff Davis admits that he believes
4 that he reviewed the then-current Google Privacy Policy before he first used Incognito Mode, and
5 he recalls reviewing the Incognito Splash Screen before he first used Incognito Mode and each
6 time thereafter, and neither the Google Privacy Policy nor the Incognito Splash Screen stated that
7 Google would intercept and collect his private browsing activity. Plaintiff Davis did not consent
8 to that interception and collection of his private browsing activity. Otherwise Denied.

9 **REQUEST FOR ADMISSION NO. 4:**

10 Admit that YOU have never indicated to Google that YOU did not agree to the GOOGLE
11 PRIVACY POLICY.

12 **ORIGINAL RESPONSE TO REQUEST FOR ADMISSION NO. 4:**

13 Plaintiff Davis objects to this Request as vague and overly broad to the extent Google has
14 defined the GOOGLE PRIVACY POLICY to include the policy available at
15 <https://policies.google.com/privacy> "and any prior version of this policy." Plaintiff Davis further
16 objects to this Request to the extent it purports to suggest that review of and consent to Google's
17 Privacy Policy is a necessary predicate for any claim in this litigation. Plaintiff Davis' allegations
18 relate to Google's conduct of secretly and unlawfully intercepting, collecting data from, analyzing,
19 and monetizing Plaintiff Davis' (and class members') browsing activity conducted in private
20 browsing mode, despite Google's representations (including without limitation in the Incognito
21 private browsing mode) that private browsing mode was private and that Plaintiff Davis' (and class
22 members') private browsing information would not be collected by Google. Users did not need
23 any Google account to browse privately, using Incognito mode or otherwise. Further, to the best
24 of Plaintiff Davis' knowledge, he has never logged into any Google accounts in Chrome when
25 using Chrome's private browsing mode.

26 Notwithstanding and subject to these objections, Plaintiff Davis admits that, at or around
27 the time he opened his Google Account and at times thereafter, he reviewed Google representations
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1 that he was in “control” of what information Google collects and could exercise such control by
2 enabling private browsing mode, such as the representations outlined in paragraphs 2 and 42 of
3 the First Amended Complaint. He understands this, along with the Chrome Incognito Notice (i.e.,
4 the Incognito splash screen that he reviewed each time he began a private browsing mode session
5 in Chrome), to be the Google Privacy Policy. To the extent Google’s defined “Google Privacy
6 Policy” is applicable, it did not provide consent to Google’s conduct alleged in the First Amended
7 Complaint. Otherwise Denied.

8 **AMENDED RESPONSE TO REQUEST FOR ADMISSION NO. 4:**

9
10 Plaintiff Davis objects to this Request as vague and overly broad to the extent Google has
11 defined the GOOGLE PRIVACY POLICY to include the policy available at
12 <https://policies.google.com/privacy> “and any prior version of this policy.” Plaintiff Davis further
13 objects to this Request to the extent it purports to suggest that review of and consent to Google’s
14 Privacy Policy is a necessary predicate for any claim in this litigation. Plaintiff Davis’ allegations
15 relate to Google’s conduct of secretly and unlawfully intercepting, collecting data from, analyzing,
16 and monetizing Plaintiff Davis’ (and class members’) browsing activity conducted in private
17 browsing mode, despite Google’s representations (including without limitation in the Incognito
18 private browsing mode) that private browsing mode was private and that Plaintiff Davis’ (and class
19 members’) private browsing information would not be collected by Google. Users did not need
20 any Google account to browse privately, using Incognito mode or otherwise. Further, to the best
21 of Plaintiff Davis’ knowledge, he has never logged into any Google accounts in Chrome when
22 using Chrome’s private browsing mode.

23 Notwithstanding and subject to these objections, Plaintiff Davis admits that, prior to
24 discovering this lawsuit, Plaintiff Davis did not indicate to Google that he did not agree to the then-
25 current Google Privacy Policy. However, Google’s Privacy Policy does not disclose Google’s
26 alleged data collection while users are in private browsing mode, and he never consented to
27 Google’s interception and collection of his private browsing activity. Plaintiff Davis further states
28

1 that this lawsuit put Google on notice that its continued interception and collection of his and Class
2 Members' private browsing activity is without consent and contrary to the law. Otherwise Denied.

3 **REQUEST FOR ADMISSION NO. 5:**

4 Admit that the GOOGLE PRIVACY POLICY discloses that Google collects through its
5 SERVICES the categories of Data that YOUR FAC alleges Google illegally "intercepted." *See*,
6 *e.g.*, FAC ¶¶ 202-17.

7 **RESPONSE TO REQUEST FOR ADMISSION NO. 5:**

8 Denied.

9 **REQUEST FOR ADMISSION NO. 6:**

10 Admit that each GOOGLE PRIVACY POLICY YOU reviewed disclosed that Google
11 collects information about users' visits to websites that use Google's services.

12 **RESPONSE TO REQUEST FOR ADMISSION NO. 6:**

13 Denied.

14 **REQUEST FOR ADMISSION NO. 7:**

15 Admit that the GOOGLE PRIVACY POLICY does not represent that using private
16 browsing mode will prevent Google from receiving information through its SERVICES.

17 **RESPONSE TO REQUEST FOR ADMISSION NO. 7:**

18 Denied.

19 **REQUEST FOR ADMISSION NO. 8:**

20 Admit that, during the CLASS PERIOD, YOU were aware that "Google collects
21 information about the web-browsing activity of users who are not in 'private browsing mode.'" *See* FAC ¶ 163.

22 **RESPONSE TO REQUEST FOR ADMISSION NO. 8:**

23 Plaintiff Davis admits that he was aware that Google was online collecting data sometimes,
24 when he was not browsing in private mode, but did not understand exactly how. Otherwise denied.

25 **REQUEST FOR ADMISSION NO. 9:**

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1 Admit that, when YOU visited websites using Chrome in Incognito mode, YOU were
2 aware that the websites may record data associated with your visit (for example, on the websites'
3 servers), including the webpages YOU viewed.

4 **RESPONSE TO REQUEST FOR ADMISSION NO. 9:**

5 Denied.

6 **REQUEST FOR ADMISSION NO. 10:**

7 Admit that, when YOU visited websites using Chrome in Incognito mode, YOU were
8 aware that your alleged COMMUNICATIONS with the websites might be recorded by the
9 websites (for example, on the websites' servers).

10 **RESPONSE TO REQUEST FOR ADMISSION NO. 10:**

11 Denied.

12 **REQUEST FOR ADMISSION NO. 11:**

13 Admit that, when YOU visited websites using Chrome in Incognito mode, YOU were
14 aware that your alleged COMMUNICATIONS with the websites might be visible to YOUR
15 internet service provider.

16 **RESPONSE TO REQUEST FOR ADMISSION NO. 11:**

17 Denied.

18 **REQUEST FOR ADMISSION NO. 12:**

19 Admit that, during the CLASS PERIOD, you understood the terms "private browsing" and
20 "browse privately" in the Google disclosures that YOU allege YOU reviewed did not mean that
21 your internet browsing activity would be completely private from everyone.

22 **RESPONSE TO REQUEST FOR ADMISSION NO. 12:**

23 Plaintiff Davis admits that, when he visited websites using Chrome in Incognito mode, his
24 activity might still be visible to those websites, his employer or school, and/or his internet service
25 provider. Plaintiff Davis did not, however, consent to Google's interception of that activity.
26 Otherwise denied.

27 **REQUEST FOR ADMISSION NO. 13:**
28

1 Admit that when YOU browsed the web in Incognito mode, YOU understood that cookies
2 could still be placed on YOUR browser and would be deleted when YOU closed YOUR Incognito
3 window or tab.

4 **RESPONSE TO REQUEST FOR ADMISSION NO. 13:**

5 Denied.

6 **REQUEST FOR ADMISSION NO. 14:**

7 Admit that, when YOU browsed the web in Incognito mode, YOU understood that YOUR
8 activity might still be visible to the websites YOU visited and YOUR internet service provider.

9 **RESPONSE TO REQUEST FOR ADMISSION NO. 14:**

10 Plaintiff Davis admits that, when he visited websites using Chrome in Incognito mode, his
11 activity might still be visible to those websites. Plaintiff Davis further admits that, when he visited
12 websites using Chrome in Incognito mode, his activity might still be visible to his internet service
13 provider. Plaintiff Davis did not, however, consent to Google's interception of that activity.
14 Otherwise Denied.

15 **REQUEST FOR ADMISSION NO. 15:**

16 Admit that the INCOGNITO NOTICE does not represent that Incognito mode prevents
17 Google from collecting the information that you allege Google illegally "intercepted."

18 **RESPONSE TO REQUEST FOR ADMISSION NO. 15:**

19 Denied.

20 **REQUEST FOR ADMISSION NO. 16:**

21 Admit that YOU became "aware that [YOU are] able to sell [YOUR] own personal data,
22 via other websites such as Killi," see FAC ¶¶ 170,175, 180, 185, 190, only after YOU retained
23 YOUR counsel in this action.

24 **RESPONSE TO REQUEST FOR ADMISSION NO. 16:**

25 Denied.

26 **REQUEST FOR ADMISSION NO. 17:**

27
28

1 Admit that Google's alleged conduct has not affected YOUR alleged ability "to sell
2 [YOUR] own personal data, via other websites such as Killi." *See* FAC ¶¶ 170, 175, 180, 185, 190.

3 **RESPONSE TO REQUEST FOR ADMISSION NO. 17:**

4 Denied.

5 **REQUEST FOR ADMISSION NO. 18:**

6 Admit that YOU did not download and install Google's Analytics Opt-Out Browser Add-
7 on available at <https://tools.google.com/dlpage/gaoptout>.

8 **RESPONSE TO REQUEST FOR ADMISSION NO. 18:**

9 Plaintiff Davis objects to this Request to the extent it purports to suggest that either
10 downloading and/or installing Google's Analytics Opt-Out Browser Add-on is a necessary
11 predicate for any claim in this litigation. Plaintiff Davis' allegations relate to Google's conduct of
12 secretly and unlawfully intercepting, collecting data from, analyzing, and monetizing Plaintiff
13 Davis' (and class members') browsing activity conducted in private browsing mode, despite
14 Google's representations (including without limitation in the Incognito private browsing mode)
15 that private browsing mode was private and that Plaintiff Davis' (and class members') private
16 browsing information would not be collected by Google. Users did not need to download and/or
17 install Google's Analytics Opt-Out Browser to browse privately, using Incognito mode or
18 otherwise.

19 Notwithstanding and subject to these objections, Plaintiff Davis admits that he did not
20 download or install Google's Analytics Opt-Out Browser Add-on, but this did not provide consent
21 to Google's conduct alleged in the First Amended Complaint. Otherwise denied.

22 **REQUEST FOR ADMISSION NO. 19:**

23 Admit that YOU did not change the default cookie settings on your browser.

24 **RESPONSE TO REQUEST FOR ADMISSION NO. 19:**

25 Plaintiff Davis objects to this Request to the extent it purports to suggest that review of
26 changing the "default cookie settings" on the browser is a necessary predicate for any claim in this
27 litigation. Plaintiff Davis' allegations relate to Google's conduct of secretly and unlawfully
28

1 intercepting, collecting data from, analyzing, and monetizing Plaintiff Davis' (and class members')
2 browsing activity conducted in private browsing mode, despite Google's representations
3 (including without limitation in the Incognito private browsing mode) that private browsing mode
4 was private and that Plaintiff Davis' (and class members') private browsing information would not
5 be collected by Google. Users did not need to change the "default cookie settings" on their browser
6 to browse privately, using Incognito mode or otherwise.

7 Notwithstanding and subject to these objections, Plaintiff Davis admits that he did not
8 change the "default cookie settings" on his browser, but this did not provide consent to Google's
9 conduct alleged in the First Amended Complaint. Otherwise denied.

10 **REQUEST FOR ADMISSION NO. 20:**

11 Admit that YOU did not opt out of ad personalization at <https://adssettings.google.com>.

12 **RESPONSE TO REQUEST FOR ADMISSION NO. 20:**

13 Plaintiff Davis objects to this Request to the extent it purports to suggest that opting out of
14 ad personalization at <https://adssettings.google.com> is a necessary predicate for any claim in this
15 litigation. Plaintiff Davis' allegations relate to Google's conduct of secretly and unlawfully
16 intercepting, collecting data from, analyzing, and monetizing Plaintiff Davis' (and class members')
17 browsing activity conducted in private browsing mode, despite Google's representations
18 (including without limitation in the Incognito private browsing mode) that private browsing mode
19 was private and that Plaintiff Davis' (and class members') private browsing information would not
20 be collected by Google. Users did not need to opt out of ad personalization at
21 <https://adssettings.google.com> to browse privately, using Incognito mode or otherwise.

22 Notwithstanding and subject to these objections, Plaintiff Davis admits that he did not opt
23 out of ad personalization at <https://adssettings.google.com>, but this did not provide consent to
24 Google's conduct alleged in the First Amended Complaint. Otherwise denied.

25 **REQUEST FOR ADMISSION NO. 21:**

26 Admit that YOU did not retain any information identifying the cookies Google allegedly
27 set on your browser while YOU were private browsing.
28

RESPONSE TO REQUEST FOR ADMISSION NO. 21:

While browsing privately, Plaintiff Davis admits that he was not aware that Google was placing cookies on his browser, therefore Plaintiff Davis could not have retained any information identifying the cookies Google placed. Plaintiff Davis' claims are about Google Analytics. Any cookie data that is collected by Google would be in Google's possession, and not on Plaintiff Davis' devices. Regardless, Google has yet to disclose to Plaintiff Davis how exactly it is collecting and using Plaintiff Davis' data in private browsing. Otherwise denied.

Dated: May 24, 2021

MORGAN & MORGAN

/s/ John A. Yanchunis

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Attorneys for Plaintiffs

PROOF OF SERVICE

I, Jennifer Cabezas, declare:

I am a citizen of the United States and employed in the County of Hillsborough, Florida. I am over the age of 18 and not a party to the within action; my business address is 201 N. Franklin St., 7th Floor, Tampa, FL 33602.

On May 24, 2021, I served the following document described as:

Plaintiff's Amended Objections and Responses to Defendant's Second Set of Requests for Admission

By electronic mail transmission from jcabezas@forthepeople.com on May 24, 2021, by transmitting a PDF format copy of such document to each person at the e-mail addresses listed below. The document was transmitted by electronic transmission and such transmission was reported as complete and without error:

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24 *Attorneys for Defendant*

25 Executed on May 24, 2021, at Tampa, Florida.

26
27 /s/ Jennifer Cabezas
28 Jennifer Cabezas

EXHIBIT 9

PLAINTIFF MONIQUE TRUJILLO'S OBJECTIONS AND RESPONSES TO DEFENDANT'S FIRST AND SECOND SET OF REQUESTS FOR ADMISSION

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

CHASOM BROWN, WILLIAM BYATT,
JEREMY DAVIS, CHRISTOPHER
CASTILLO, and MONIQUE TRUJILLO
individually and on behalf of all other
similarly situated,

Plaintiffs,

v.

GOOGLE LLC,

Defendant.

Case No. 5:20-cv-03664-LHK-SVK

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**PLAINTIFF MONIQUE TRUJILLO'S OBJECTIONS AND RESPONSES
TO DEFENDANT'S FIRST AND SECOND SETS OF REQUESTS FOR ADMISSION**

Pursuant to Federal Rule of Civil Procedure Rule 36, Plaintiff Monique Trujillo ("Trujillo") hereby objects and responds to Defendant's, Google LLC ("Google"), First and Second Sets of Requests for Admission (Nos. 1–21). These objections and responses are made solely for the purpose of and in relation to this action. In addition, the objections and responses set forth in this document are based on Plaintiff Trujillo's knowledge, investigations, and analysis to date. As discovery proceeds, Plaintiff Trujillo may become aware of additional facts or evidence and her analysis of the case may change. Plaintiff Trujillo reserves all rights to supplement and amend her objections and responses accordingly.

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REQUEST FOR ADMISSION NO. 1:

Admit that, when YOU signed up for YOUR Google Account, YOU reviewed and consented to the GOOGLE PRIVACY POLICY.

RESPONSE TO REQUEST FOR ADMISSION NO. 1:

Plaintiff Trujillo objects to this Request to the extent it purports to suggest that review of and consent to Google's Privacy Policy is a necessary predicate for any claim in this litigation. Plaintiff Trujillo's allegations relate to Google's conduct of secretly and unlawfully intercepting,

1 collecting data from, analyzing, and monetizing Plaintiff Trujillo's (and class members') browsing
2 activity conducted in private browsing mode, despite Google's representations (including without
3 limitation in the Incognito private browsing mode) that private browsing mode was private and
4 that Plaintiff Trujillo's (and class members') private browsing information would not be collected
5 by Google. Users did not need any Google account to browse privately, using Incognito mode or
6 otherwise. Further, to the best of Plaintiff Trujillo's knowledge, she has never logged into any
7 Google accounts in Chrome when using Chrome's private browsing mode.

8 Notwithstanding and subject to these objections, Plaintiff Trujillo admits that, when she
9 opened her Google Account, although she does not recall exact details of the then-current Privacy
10 Policy, she reviewed and generally consented to the then-current Privacy Policy, and she recalls
11 the disclosures in the Privacy Policy promising that Google would not intercept and collect her
12 private browsing activity, and she did not consent to that interception and collection. Otherwise
13 Denied.

14 **REQUEST FOR ADMISSION NO. 2:**

15 Admit that, when YOU signed up for YOUR GOOGLE ACCOUNT, YOU indicated to
16 Google that YOU agreed to Google's then-current TERMS OF SERVICE.

17 **RESPONSE TO REQUEST FOR ADMISSION NO. 2:**

18 Plaintiff Trujillo objects to this Request as vague and overly broad to the extent Google
19 relies on the undefined, capitalized term "TERMS OF SERVICE," as Plaintiff Trujillo cannot be
20 expected to guess or speculate as to which "TERMS OF SERVICE" Google might be referring to
21 in this Request. Plaintiff Trujillo further objects to this Request to the extent it purports to suggest
22 that review of and consent to Google's Terms of Service is a necessary predicate for any claim in
23 this litigation. Plaintiff Trujillo's allegations relate to Google's conduct of secretly and unlawfully
24 intercepting, collecting data from, analyzing, and monetizing Plaintiff Trujillo's (and class
25 members') browsing activity conducted in private browsing mode, despite Google's
26 representations (including without limitation in the Incognito private browsing mode) that private
27 browsing mode was private and that Plaintiff Trujillo's (and class members') private browsing
28

1 information would not be collected by Google. Users did not need any Google account to browse
2 privately, using Incognito mode or otherwise. Further, to the best of Plaintiff Trujillo's knowledge,
3 she has never logged into any Google accounts in Chrome when using Chrome's private browsing
4 mode.

5 Notwithstanding and subject to these objections, Plaintiff Trujillo admits that, when she
6 signed up for her Google Account, although she does not recall the exact details of the then-current
7 Terms of Service, she indicated to Google that she generally agreed to Google's then-current
8 Terms of Service—which incorporates the Google Chrome and Chrome OS Additional Terms of
9 Service, the Chrome Privacy Notice, the Privacy Policy, the "Search & Browse Privately" page,
10 and the Incognito Screen—and she recalls the disclosures promising that Google would not
11 intercept and collect her private browsing activity, and did she not consent to that interception and
12 collection. Otherwise Denied.

13 **REQUEST FOR ADMISSION NO. 3:**

14 Admit that YOU reviewed the GOOGLE PRIVACY POLICY before you first used
15 INCOGNITO MODE.

16 **RESPONSE TO REQUEST FOR ADMISSION NO. 3:**

17 Plaintiff Trujillo objects to this Request as vague and overly broad to the extent Google
18 has defined the GOOGLE PRIVACY POLICY to include the policy available at
19 <https://policies.google.com/privacy> "and any prior version of this policy." Plaintiff Trujillo further
20 objects to this Request to the extent it purports to suggest that review of and consent to Google's
21 Privacy Policy is a necessary predicate for any claim in this litigation. Plaintiff Trujillo's
22 allegations relate to Google's conduct of secretly and unlawfully intercepting, collecting data from,
23 analyzing, and monetizing Plaintiff Trujillo's (and class members') browsing activity conducted
24 in private browsing mode, despite Google's representations (including without limitation in the
25 Incognito private browsing mode) that private browsing mode was private and that Plaintiff
26 Trujillo's (and class members') private browsing information would not be collected by Google.
27 Users did not need any Google account to browse privately, using Incognito mode or otherwise.
28

1 Further, to the best of Plaintiff Trujillo's knowledge, she has never logged into any Google
2 accounts in Chrome when using Chrome's private browsing mode.

3 Notwithstanding and subject to these objections, Plaintiff Trujillo admits that she is not
4 sure whether she reviewed the then-current Google Privacy Policy before she first used Incognito
5 Mode, but she did review the Incognito Splash Screen before she first used Incognito Mode and
6 each time thereafter, which did not state that Google would intercept and collect her private
7 browsing activity. Plaintiff Trujillo did not consent to that interception and collection of her private
8 browsing activity. Otherwise Denied.

9 **REQUEST FOR ADMISSION NO. 4:**

10 Admit that YOU have never indicated to Google that YOU did not agree to the GOOGLE
11 PRIVACY POLICY.

12 **RESPONSE TO REQUEST FOR ADMISSION NO. 4:**

13 Plaintiff Trujillo objects to this Request as vague and overly broad to the extent Google
14 has defined the GOOGLE PRIVACY POLICY to include the policy available at
15 <https://policies.google.com/privacy> "and any prior version of this policy." Plaintiff Trujillo further
16 objects to this Request to the extent it purports to suggest that review of and consent to Google's
17 Privacy Policy is a necessary predicate for any claim in this litigation. Plaintiff Trujillo's
18 allegations relate to Google's conduct of secretly and unlawfully intercepting, collecting data from,
19 analyzing, and monetizing Plaintiff Trujillo's (and class members') browsing activity conducted
20 in private browsing mode, despite Google's representations (including without limitation in the
21 Incognito private browsing mode) that private browsing mode was private and that Plaintiff
22 Trujillo's (and class members') private browsing information would not be collected by Google.
23 Users did not need any Google account to browse privately, using Incognito mode or otherwise.
24 Further, to the best of Plaintiff Trujillo's knowledge, she has never logged into any Google
25 accounts in Chrome when using Chrome's private browsing mode.

26 Notwithstanding and subject to these objections, Plaintiff Trujillo admits that, prior to
27 filing this lawsuit, she did not indicate to Google that she did not agree to the then-current Google
28

1 Privacy Policy. However, Google's Privacy Policy does not disclose Google's alleged data
2 collection while users are in private browsing mode, and she never consented to Google's
3 interception and collection of her private browsing activity. Plaintiff Trujillo further states that this
4 lawsuit put Google on notice that its continued interception and collection of her and Class
5 Members' private browsing activity is without consent and contrary to the law. Otherwise Denied.

6 **REQUEST FOR ADMISSION NO. 5:**

7 Admit that the GOOGLE PRIVACY POLICY discloses that Google collects through its
8 SERVICES the categories of Data that YOUR SAC alleges Google illegally "intercepted." *See*,
9 *e.g.*, SAC ¶¶ 202-17.

10 **RESPONSE TO REQUEST FOR ADMISSION NO. 5:**

11 Denied.

12 **REQUEST FOR ADMISSION NO. 6:**

13 Admit that each GOOGLE PRIVACY POLICY YOU reviewed disclosed that Google
14 collects information about users' visits to websites that use Google's services.

15 **RESPONSE TO REQUEST FOR ADMISSION NO. 6:**

16 Denied.

17 **REQUEST FOR ADMISSION NO. 7:**

18 Admit that the GOOGLE PRIVACY POLICY does not represent that using private
19 browsing mode will prevent Google from receiving information through its SERVICES.

20 **RESPONSE TO REQUEST FOR ADMISSION NO. 7:**

21 Denied.

22 **REQUEST FOR ADMISSION NO. 8:**

23 Admit that, during the CLASS PERIOD, YOU were aware that "Google collects
24 information about the web-browsing activity of users who are not in 'private browsing mode.'" *See* SAC ¶ 163.

25 **RESPONSE TO REQUEST FOR ADMISSION NO. 8:**

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1 Plaintiff Trujillo admits that she was aware that Google was online collecting data
2 sometimes, when she was not browsing in private mode, but did not understand exactly how.
3 Otherwise denied.

4 **REQUEST FOR ADMISSION NO. 9:**

5 Admit that, when YOU visited websites using Chrome in Incognito mode, YOU were
6 aware that the websites may record data associated with your visit (for example, on the websites'
7 servers), including the webpages YOU viewed.

8 **RESPONSE TO REQUEST FOR ADMISSION NO. 9:**

9 Denied.

10 **REQUEST FOR ADMISSION NO. 10:**

11 Admit that, when YOU visited websites using Chrome in Incognito mode, YOU were
12 aware that your alleged COMMUNICATIONS with the websites might be recorded by the
13 websites (for example, on the websites' servers).

14 **RESPONSE TO REQUEST FOR ADMISSION NO. 10:**

15 Denied.

16 **REQUEST FOR ADMISSION NO. 11:**

17 Admit that, when YOU visited websites using Chrome in Incognito mode, YOU were
18 aware that your alleged COMMUNICATIONS with the websites might be visible to YOUR
19 internet service provider.

20 **RESPONSE TO REQUEST FOR ADMISSION NO. 11:**

21 Denied.

22 **REQUEST FOR ADMISSION NO. 12:**

23 Admit that, during the CLASS PERIOD, you understood the terms "private browsing" and
24 "browse privately" in the Google disclosures that YOU allege YOU reviewed did not mean that
25 your internet browsing activity would be completely private from everyone.

26 **RESPONSE TO REQUEST FOR ADMISSION NO. 12:**

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28

1 Plaintiff Trujillo admits that, when she visited websites using Chrome in Incognito mode,
2 her activity might still be visible to those websites, her employer or school, and/or her internet
3 service provider. Plaintiff Trujillo did not, however, consent to Google's interception of that
4 activity. Otherwise denied.

5 **REQUEST FOR ADMISSION NO. 13:**

6 Admit that when YOU browsed the web in Incognito mode, YOU understood that cookies
7 could still be placed on YOUR browser and would be deleted when YOU closed YOUR Incognito
8 window or tab.

9 **RESPONSE TO REQUEST FOR ADMISSION NO. 13:**

10 Denied.

11 **REQUEST FOR ADMISSION NO. 14:**

12 Admit that, when YOU browsed the web in Incognito mode, YOU understood that YOUR
13 activity might still be visible to the websites YOU visited and YOUR internet service provider.

14 **RESPONSE TO REQUEST FOR ADMISSION NO. 14:**

15 Plaintiff Trujillo admits that, when she visited websites using Chrome in Incognito mode,
16 her activity might still be visible to those websites. Plaintiff Trujillo further admits that, when she
17 visited websites using Chrome in Incognito mode, her activity might still be visible to her internet
18 service provider. Plaintiff Trujillo did not, however, consent to Google's interception of that
19 activity. Otherwise Denied.

20 **REQUEST FOR ADMISSION NO. 15:**

21 Admit that the INCOGNITO NOTICE does not represent that Incognito mode prevents
22 Google from collecting the information that you allege Google illegally "intercepted."

23 **RESPONSE TO REQUEST FOR ADMISSION NO. 15:**

24 Denied.

25 **REQUEST FOR ADMISSION NO. 16:**

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28

1 Admit that YOU became “aware that [YOU are] able to sell [YOUR] own personal data,
2 via other websites such as Killi,” *see* SAC ¶¶ 170,175, 180, 185, 190, only after YOU retained
3 YOUR counsel in this action.

4 **RESPONSE TO REQUEST FOR ADMISSION NO. 16:**

5 Denied.

6 **REQUEST FOR ADMISSION NO. 17:**

7 Admit that Google’s alleged conduct has not affected YOUR alleged ability “to sell
8 [YOUR] own personal data, via other websites such as Killi.” *See* SAC ¶¶ 170, 175, 180, 185, 190.

9 **RESPONSE TO REQUEST FOR ADMISSION NO. 17:**

10 Denied.

11 **REQUEST FOR ADMISSION NO. 18:**

12 Admit that YOU did not download and install Google’s Analytics Opt-Out Browser Add-
13 on available at <https://tools.google.com/dlpage/gaoptout>.

14 **RESPONSE TO REQUEST FOR ADMISSION NO. 18:**

15 Plaintiff Trujillo objects to this Request to the extent it purports to suggest that either
16 downloading and/or installing Google’s Analytics Opt-Out Browser Add-on is a necessary
17 predicate for any claim in this litigation. Plaintiff Trujillo’s allegations relate to Google’s conduct
18 of secretly and unlawfully intercepting, collecting data from, analyzing, and monetizing Plaintiff
19 Trujillo’s (and class members’) browsing activity conducted in private browsing mode, despite
20 Google’s representations (including without limitation in the Incognito private browsing mode)
21 that private browsing mode was private and that Plaintiff Trujillo’s (and class members’) private
22 browsing information would not be collected by Google. Users did not need to download and/or
23 install Google’s Analytics Opt-Out Browser to browse privately, using Incognito mode or
24 otherwise.

25 Notwithstanding and subject to these objections, Plaintiff Trujillo admits that she did not
26 download or install Google’s Analytics Opt-Out Browser Add-on, but this did not provide consent
27 to Google’s conduct alleged in the Second Amended Complaint. Otherwise denied.
28

REQUEST FOR ADMISSION NO. 19:

Admit that YOU did not change the default cookie settings on your browser.

RESPONSE TO REQUEST FOR ADMISSION NO. 19:

Plaintiff Trujillo objects to this Request to the extent it purports to suggest that review of changing the “default cookie settings” on the browser is a necessary predicate for any claim in this litigation. Plaintiff Trujillo’s allegations relate to Google’s conduct of secretly and unlawfully intercepting, collecting data from, analyzing, and monetizing Plaintiff Trujillo’s (and class members’) browsing activity conducted in private browsing mode, despite Google’s representations (including without limitation in the Incognito private browsing mode) that private browsing mode was private and that Plaintiff Trujillo’s (and class members’) private browsing information would not be collected by Google. Users did not need to change the “default cookie settings” on their browser to browse privately, using Incognito mode or otherwise.

Notwithstanding and subject to these objections, Plaintiff Trujillo admits that she did not change the “default cookie settings” on her browser, but this did not provide consent to Google’s conduct alleged in the Second Amended Complaint. Otherwise denied.

REQUEST FOR ADMISSION NO. 20:

Admit that YOU did not opt out of ad personalization at <https://adssettings.google.com>.

RESPONSE TO REQUEST FOR ADMISSION NO. 20:

Plaintiff Trujillo objects to this Request to the extent it purports to suggest that opting out of ad personalization at <https://adssettings.google.com> is a necessary predicate for any claim in this litigation. Plaintiff Trujillo’s allegations relate to Google’s conduct of secretly and unlawfully intercepting, collecting data from, analyzing, and monetizing Plaintiff Trujillo’s (and class members’) browsing activity conducted in private browsing mode, despite Google’s representations (including without limitation in the Incognito private browsing mode) that private browsing mode was private and that Plaintiff Trujillo’s (and class members’) private browsing information would not be collected by Google. Users did not need to opt out of ad personalization at <https://adssettings.google.com> to browse privately, using Incognito mode or otherwise.

1 Notwithstanding and subject to these objections, Plaintiff Trujillo admits that she did not
2 opt out of ad personalization at <https://adssettings.google.com>, but this did not provide consent to
3 Google's conduct alleged in the Second Amended Complaint. Otherwise denied.

4 **REQUEST FOR ADMISSION NO. 21:**

5 Admit that YOU did not retain any information identifying the cookies Google allegedly
6 set on your browser while YOU were private browsing.

7 **RESPONSE TO REQUEST FOR ADMISSION NO. 21:**

8 While browsing privately, Plaintiff Trujillo admits that she was not aware that Google was
9 placing cookies on her browser, therefore Plaintiff Trujillo could not have retained any information
10 identifying the cookies Google placed. Plaintiff Trujillo's claims are about Google Analytics. Any
11 cookie data that is collected by Google would be in Google's possession, and not on Plaintiff
12 Trujillo's devices. Regardless, Google has yet to disclose to Plaintiff Trujillo how exactly it is
13 collecting and using Plaintiff Trujillo's data in private browsing. Otherwise denied.

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Dated: June 7, 2021

MORGAN & MORGAN

/s/ John A. Yanchunis

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Attorneys for Plaintiffs

PROOF OF SERVICE

I, Ryan J. McGee, declare:

I am a citizen of the United States and employed in the County of Hillsborough, Florida. I am over the age of 18 and not a party to the within action; my business address is 201 N. Franklin St., 7th Floor, Tampa, FL 33602.

On June 7, 2021, I served the following document described as:

Plaintiff's Objections and Responses to Defendant's First and Second Sets of Requests for Admission

By electronic mail transmission from rmcgee@forthepeople.com on June 7, 2021, by transmitting a PDF format copy of such document to each person at the e-mail addresses listed below. The document was transmitted by electronic transmission and such transmission was reported as complete and without error:

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13 Fax: 202-538-8100
14 williamburck@quinnemanuel.com
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23 jonathantse@quinnemanuel.com

24 *Attorneys for Defendant*

25 Executed on June 7, 2021, at Tampa, Florida.

26
27 /s/ Ryan J. McGee
28 Ryan J. McGee

EXHIBIT 10

PLAINTIFF CHASOM BROWN'S OBJECTIONS AND RESPONSES TO DEFENDANT'S THIRD SET OF REQUESTS FOR PRODUCTION

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

CHASOM BROWN, WILLIAM BYATT,
JEREMY DAVIS, CHRISTOPHER
CASTILLO, and MONIQUE TRUJILLO
individually and on behalf of all other
similarly situated,

Plaintiffs,

v.

GOOGLE LLC,

Defendant.

Case No. 5:20-cv-03664-LHK-SVK

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**PLAINTIFF CHASOM BROWN’S OBJECTIONS AND RESPONSES
TO DEFENDANT’S THIRD SET OF REQUESTS FOR ADMISSION**

Pursuant to Federal Rule of Civil Procedure Rule 36, Plaintiff Chasom Brown (“Brown”) hereby objects and responds to Defendant’s, Google LLC (“Google”), Third Set of Requests for Admission (Nos. 22–29). These objections and responses are made solely for the purpose of and in relation to this action. In addition, the objections and responses set forth in this document are based on Plaintiff Brown’s knowledge, investigations, and analysis to date. As discovery proceeds, Plaintiff Brown may become aware of additional facts or evidence and his analysis of the case may change. Plaintiff Brown reserves all rights to supplement and amend his objections and responses accordingly.

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REQUEST FOR ADMISSION NO. 22:

Admit that, when YOU signed up for YOUR GOOGLE ACCOUNT, YOU agreed to the terms of Google’s then-current TERMS OF SERVICE.

RESPONSE TO REQUEST FOR ADMISSION NO. 22:

Plaintiff Brown objects to this Request to the extent it purports to suggest that agreement to Google’s Terms of Service is a necessary predicate for any claim in this litigation (aside from breach of contract). Plaintiff’s allegations relate to Google’s conduct of secretly and unlawfully

1 intercepting, collecting data from, analyzing, and monetizing Plaintiff's (and class members')
2 browsing activity conducted in private browsing mode, despite Google's representations
3 (including without limitation in the Incognito private browsing mode) that private browsing mode
4 was private and that Plaintiff's (and class members') private browsing information would not be
5 collected by Google. Users did not need any Google account to browse privately, using Incognito
6 mode or otherwise. Further, to the best of Plaintiff's knowledge, he has never logged into any
7 Google accounts in Chrome when using Chrome's private browsing mode.

8
9 Notwithstanding and subject to these objections, Plaintiff Brown admits that, when he
10 signed up for his Google Account, although he does not recall the exact details of the then-current
11 Terms of Service, he indicated to Google that he generally agreed to Google's then-current Terms
12 of Service—which incorporates the Google Chrome and Chrome OS Additional Terms of Service,
13 the Chrome Privacy Notice, the Privacy Policy, the "Search & Browse Privately" page, and the
14 Incognito Screen—and he recalls the disclosures promising that Google would not intercept and
15 collect his private browsing activity, and he did not consent to that interception and collection.
16 Otherwise Denied.

17 **REQUEST FOR ADMISSION NO. 23:**

18 Admit that, when YOU signed up for YOUR GOOGLE ACCOUNT, YOU agreed to the
19 terms of Google's then-current PRIVACY POLICY.

20 **RESPONSE TO REQUEST FOR ADMISSION NO. 23:**

21 Plaintiff Brown objects to this Request to the extent it purports to suggest that agreement
22 to Google's Privacy Policy is a necessary predicate for any claim in this litigation (aside from
23 breach of contract). Plaintiff's allegations relate to Google's conduct of secretly and unlawfully
24 intercepting, collecting data from, analyzing, and monetizing Plaintiff's (and class members')
25 browsing activity conducted in private browsing mode, despite Google's representations
26 (including without limitation in the Incognito private browsing mode) that private browsing mode
27 was private and that Plaintiff's (and class members') private browsing information would not be
28 collected by Google. Users did not need any Google account to browse privately, using Incognito

1 mode or otherwise. Further, to the best of Plaintiff's knowledge, he has never logged into any
2 Google accounts in Chrome when using Chrome's private browsing mode.

3 Notwithstanding and subject to these objections, Plaintiff Brown admits that, when he
4 signed up for his Google Account, although he does not recall the exact details of the then-current
5 Privacy Policy, he indicated to Google that he generally agreed to Google's then-current Terms of
6 Service—which incorporates the Google Chrome and Chrome OS Additional Terms of Service,
7 the Chrome Privacy Notice, the Privacy Policy, the "Search & Browse Privately" page, and the
8 Incognito Screen—and he recalls the disclosures promising that Google would not intercept and
9 collect his private browsing activity, and he did not consent to that interception and collection.
10 Otherwise Denied.

11 **REQUEST FOR ADMISSION NO. 24:**

12 Admit that, when YOU used the Chrome browser, YOU agreed to the terms of Google's
13 then-current CHROME TERMS OF SERVICE.

14 **ORIGINAL RESPONSE TO REQUEST FOR ADMISSION NO. 24:**

15 Plaintiff Brown admits that, when he used the Chrome browser, although he does not recall
16 the exact details of the then-current Chrome Terms of Service, he indicated to Google that he
17 generally agreed to Google's then-current Chrome Terms of Service, and he recalls Google's
18 disclosures, including Google's Terms of Service, Privacy Policy, Incognito Screen, and other
19 disclosures promising that Google would not intercept and collect his private browsing activity,
20 and he did not consent to that interception and collection. Otherwise Denied.

21 **REQUEST FOR ADMISSION NO. 25:**

22 Admit that, when YOU used the Chrome browser, YOU agreed to the terms of Google's
23 then-current CHROME PRIVACY NOTICE.

24 **RESPONSE TO REQUEST FOR ADMISSION NO. 25:**

25 Plaintiff Brown admits that, when he used the Chrome browser, although he does not recall
26 the exact details of the then-current Chrome Privacy Notice, he indicated to Google that he
27 generally agreed to Google's then-current Chrome Privacy Notice, and he recalls the disclosures,
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1 including Google's Terms of Service, Privacy Policy, Incognito Screen, and other disclosures
2 promising that Google would not intercept and collect his private browsing activity, and he did not
3 consent to that interception and collection. Otherwise Denied.

4 **REQUEST FOR ADMISSION NO. 26:**

5 Admit that YOU have never paid any money to Google to use CHROME.

6 **RESPONSE TO REQUEST FOR ADMISSION NO. 26:**

7 Plaintiff Brown objects to this Request to the extent it purports to suggest that monetary
8 payment to Google is a necessary predicate for any claim in this litigation. Plaintiff and class
9 members provided valuable consideration in the form of their respective personal information they
10 agreed to share with Google in non-private browsing mode, which has ascertainable and
11 demonstrated value by its use and sale by Google. Because Google unlawfully intercepted,
12 collected data from, analyzed, and monetized Plaintiff's (and class members') browsing activity
13 conducted in private browsing mode, this private and personally identifiable data and content has
14 been diminished in value, and Plaintiff and class members have been deprived of their right to
15 control the dissemination and use of their respective personal information and communications.

16 Notwithstanding and subject to these objections, Plaintiff Brown responds that, to the best
17 of his recollection, he has not directly paid any money to Google to use Chrome. Plaintiff has,
18 however, provided valuable consideration in the form of his personal information for the use of
19 Google products, but Google unlawfully intercepted, collected data from, analyzed, and monetized
20 Plaintiff's browsing activity conducted in private browsing mode, the value of which has been
21 diminished and Google has used to its benefit to increase its profits and revenues from targeted
22 advertising and improvements of Google's other products. Otherwise denied.

23 **REQUEST FOR ADMISSION NO. 27:**

24 Admit that YOU have never paid any money to Google to use GMAIL.

25 **RESPONSE TO REQUEST FOR ADMISSION NO. 27:**

26 Plaintiff Brown objects to this Request as irrelevant, as Gmail is not at issue in this
27 litigation. Plaintiff further objects to this Request to the extent it purports to suggest that monetary
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1 payment to Google is a necessary predicate for any claim in this litigation. Plaintiff and class
2 members provided valuable consideration in the form of their respective personal information they
3 agreed to share with Google in non-private browsing mode, which has ascertainable and
4 demonstrated value by its use and sale by Google. Because Google unlawfully intercepted,
5 collected data from, analyzed, and monetized Plaintiff's (and class members') browsing activity
6 conducted in private browsing mode, this private and personally identifiable data and content has
7 been diminished in value, and Plaintiff and class members have been deprived of their right to
8 control the dissemination and use of their respective personal information and communications.

9 Notwithstanding and subject to these objections, Plaintiff Brown responds that, to the best
10 of his recollection, he has not directly paid any money to Google to use Gmail. Plaintiff has,
11 however, provided valuable consideration in the form of his personal information for the use of
12 Google products, but Google unlawfully intercepted, collected data from, analyzed, and monetized
13 Plaintiff's browsing activity conducted in private browsing mode, the value of which has been
14 diminished and Google has used to its benefit to increase its profits and revenues from targeted
15 advertising and improvements of Google's other products. Otherwise denied.

16 **REQUEST FOR ADMISSION NO. 28:**

17 Admit that YOU have never paid any money to Google to use any SERVICES offered by
18 Google.

19 **RESPONSE TO REQUEST FOR ADMISSION NO. 28:**

20 Plaintiff Brown objects to the term "Services" insofar as it is irrelevant, vague, and
21 ambiguous, as Google has defined it to include a non-exhaustive list of "Google apps, sites, and
22 devices, like Search, YouTube, and Google Home, Google platforms like the Chrome browser and
23 Android operating system, and Google products that are integrated into third-party apps and sites,
24 like ads and embedded Google Maps." Plaintiff's use of YouTube, Maps, and other irrelevant
25 "services" are not at issue in this litigation. Plaintiff further objects to this Request to the extent it
26 purports to suggest that monetary payment to Google is a necessary predicate for any claim in this
27 litigation. Plaintiff and class members provided valuable consideration in the form of their
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1 respective personal information they agreed to share with Google in non-private browsing mode,
2 which has ascertainable and demonstrated value by its use and sale by Google. Because Google
3 unlawfully intercepted, collected data from, analyzed, and monetized Plaintiff's (and class
4 members') browsing activity conducted in private browsing mode, this private and personally
5 identifiable data and content has been diminished in value, and Plaintiff and class members have
6 been deprived of their right to control the dissemination and use of their respective personal
7 information and communications.

8 Notwithstanding and subject to these objections, Plaintiff Brown responds that, to the best
9 of his recollection, he has not directly paid any money to Google to use services offered by Google.
10 Plaintiff has, however, provided valuable consideration in the form of his personal information for
11 the use of Google products, but Google unlawfully intercepted, collected data from, analyzed, and
12 monetized Plaintiff's browsing activity conducted in private browsing mode, the value of which
13 has been diminished and Google has used to its benefit to increase its profits and revenues from
14 targeted advertising and improvements of Google's other products. Otherwise denied.

15 **REQUEST FOR ADMISSION NO. 29:**

16 Admit that in YOUR GOOGLE ACCOUNT WEB & APP ACTIVITY SETTINGS, YOU
17 consented to Google saving information about your activity on sites that use Google services in
18 Your Google Account.

19 **RESPONSE TO REQUEST FOR ADMISSION NO. 29:**

20 Plaintiff Brown objects to this Request as irrelevant, as Web & App Activity is not at issue
21 in this litigation. Otherwise denied.
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1 Dated: July 30, 2021

MORGAN & MORGAN

2 /s/ John A. Yanchunis

3 John A. Yanchunis (*pro hac vice*)
4 Ryan J. McGee (*pro hac vice*)
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28 *Attorneys for Plaintiffs*

PROOF OF SERVICE

I, Jennifer Cabezas, declare:

I am a citizen of the United States and employed in the County of Hillsborough, Florida. I am over the age of 18 and not a party to the within action; my business address is 201 N. Franklin St., 7th Floor, Tampa, FL 33602.

On July 30, 2021, I served the following document described as:

Plaintiff's Objections and Responses to Defendant's Third Set of Requests for Admission

By electronic mail transmission from jcabezas@forthepeople.com on July 30, 2021, by transmitting a PDF format copy of such document to each person at the e-mail addresses listed below. The document was transmitted by electronic transmission and such transmission was reported as complete and without error:

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22 Fax: 415-875-6700
23 jonathantse@quinnemanuel.com

24 *Attorneys for Defendant*

25 Executed on July 30, 2021, at Tampa, Florida.

26
27 /s/ Jennifer Cabezas
28 Jennifer Cabezas

EXHIBIT 11

PLAINTIFF WILLIAM BYATT'S OBJECTIONS AND RESPONSES TO DEFENDANT'S THIRD SET OF REQUESTS FOR ADMISSION

**Redacted Version of
Document Sought to be
Sealed**

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

CHASOM BROWN, WILLIAM BYATT,
JEREMY DAVIS, CHRISTOPHER
CASTILLO, and MONIQUE TRUJILLO
individually and on behalf of all other
similarly situated,

Plaintiffs,

v.

GOOGLE LLC,

Defendant.

Case No. 5:20-cv-03664-LHK-SVK

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**PLAINTIFF WILLIAM BYATT’S OBJECTIONS AND RESPONSES
TO DEFENDANT’S THIRD SET OF REQUESTS FOR ADMISSION**

Pursuant to Federal Rule of Civil Procedure Rule 36, Plaintiff William Byatt (“Byatt”) hereby objects and responds to Defendant’s, Google LLC (“Google”), Third Set of Requests for Admission (Nos. 22–29). These objections and responses are made solely for the purpose of and in relation to this action. In addition, the objections and responses set forth in this document are based on Plaintiff Byatt’s knowledge, investigations, and analysis to date. As discovery proceeds, Plaintiff Byatt may become aware of additional facts or evidence and his analysis of the case may change. Plaintiff Byatt reserves all rights to supplement and amend his objections and responses accordingly.

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REQUEST FOR ADMISSION NO. 22:

Admit that, when YOU signed up for YOUR GOOGLE ACCOUNT, YOU agreed to the terms of Google’s then-current TERMS OF SERVICE.

RESPONSE TO REQUEST FOR ADMISSION NO. 22:

Plaintiff Byatt objects to this Request to the extent it purports to suggest that agreement to Google’s Terms of Service is a necessary predicate for any claim in this litigation (aside from breach of contract). Plaintiff’s allegations relate to Google’s conduct of secretly and unlawfully

1 intercepting, collecting data from, analyzing, and monetizing Plaintiff's (and class members')
2 browsing activity conducted in private browsing mode, despite Google's representations
3 (including without limitation in the Incognito private browsing mode) that private browsing mode
4 was private and that Plaintiff's (and class members') private browsing information would not be
5 collected by Google. Users did not need any Google account to browse privately, using Incognito
6 mode or otherwise. Further, to the best of Plaintiff's knowledge, he has never logged into any
7 Google accounts in Chrome when using Chrome's private browsing mode.

8
9 Notwithstanding and subject to these objections, Plaintiff Byatt admits that, when he signed
10 up for his Google Account, although he does not recall the exact details of the then-current Terms
11 of Service, he indicated to Google that he generally agreed to Google's then-current Terms of
12 Service—which incorporates the Google Chrome and Chrome OS Additional Terms of Service,
13 the Chrome Privacy Notice, the Privacy Policy, the "Search & Browse Privately" page, and the
14 Incognito Screen—and he recalls the disclosures promising that Google would not intercept and
15 collect his private browsing activity, and he did not consent to that interception and collection.
16 Otherwise Denied.

17 **REQUEST FOR ADMISSION NO. 23:**

18 Admit that, when YOU signed up for YOUR GOOGLE ACCOUNT, YOU agreed to the
19 terms of Google's then-current PRIVACY POLICY.

20 **RESPONSE TO REQUEST FOR ADMISSION NO. 23:**

21 Plaintiff Byatt objects to this Request to the extent it purports to suggest that agreement to
22 Google's Privacy Policy is a necessary predicate for any claim in this litigation (aside from breach
23 of contract). Plaintiff's allegations relate to Google's conduct of secretly and unlawfully
24 intercepting, collecting data from, analyzing, and monetizing Plaintiff's (and class members')
25 browsing activity conducted in private browsing mode, despite Google's representations
26 (including without limitation in the Incognito private browsing mode) that private browsing mode
27 was private and that Plaintiff's (and class members') private browsing information would not be
28 collected by Google. Users did not need any Google account to browse privately, using Incognito

1 mode or otherwise. Further, to the best of Plaintiff's knowledge, he has never logged into any
2 Google accounts in Chrome when using Chrome's private browsing mode.

3 Notwithstanding and subject to these objections, Plaintiff Byatt admits that, when he signed
4 up for his Google Account, although he does not recall the exact details of the then-current Privacy
5 Policy, he indicated to Google that he generally agreed to Google's then-current Terms of
6 Service—which incorporates the Google Chrome and Chrome OS Additional Terms of Service,
7 the Chrome Privacy Notice, the Privacy Policy, the "Search & Browse Privately" page, and the
8 Incognito Screen—and he recalls the disclosures promising that Google would not intercept and
9 collect his private browsing activity, and he did not consent to that interception and collection.
10 Otherwise Denied.

11 **REQUEST FOR ADMISSION NO. 24:**

12 Admit that, when YOU used the Chrome browser, YOU agreed to the terms of Google's
13 then-current CHROME TERMS OF SERVICE.

14 **ORIGINAL RESPONSE TO REQUEST FOR ADMISSION NO. 24:**

15 Plaintiff Byatt admits that, when he used the Chrome browser, although he does not recall
16 the exact details of the then-current Chrome Terms of Service, he indicated to Google that he
17 generally agreed to Google's then-current Chrome Terms of Service, and he recalls Google's
18 disclosures, including Google's Terms of Service, Privacy Policy, Incognito Screen, and other
19 disclosures promising that Google would not intercept and collect his private browsing activity,
20 and he did not consent to that interception and collection. Otherwise Denied.

21 **REQUEST FOR ADMISSION NO. 25:**

22 Admit that, when YOU used the Chrome browser, YOU agreed to the terms of Google's
23 then-current CHROME PRIVACY NOTICE.

24 **RESPONSE TO REQUEST FOR ADMISSION NO. 25:**

25 Plaintiff Byatt admits that, when he used the Chrome browser, although he does not recall
26 the exact details of the then-current Chrome Privacy Notice, he indicated to Google that he
27 generally agreed to Google's then-current Chrome Privacy Notice, and he recalls the disclosures,
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1 including Google's Terms of Service, Privacy Policy, Incognito Screen, and other disclosures
2 promising that Google would not intercept and collect his private browsing activity, and he did not
3 consent to that interception and collection. Otherwise Denied.

4 **REQUEST FOR ADMISSION NO. 26:**

5 Admit that YOU have never paid any money to Google to use CHROME.

6 **RESPONSE TO REQUEST FOR ADMISSION NO. 26:**

7 Plaintiff Byatt objects to this Request to the extent it purports to suggest that monetary
8 payment to Google is a necessary predicate for any claim in this litigation. Plaintiff and class
9 members provided valuable consideration in the form of their respective personal information they
10 agreed to share with Google in non-private browsing mode, which has ascertainable and
11 demonstrated value by its use and sale by Google. Because Google unlawfully intercepted,
12 collected data from, analyzed, and monetized Plaintiff's (and class members') browsing activity
13 conducted in private browsing mode, this private and personally identifiable data and content has
14 been diminished in value, and Plaintiff and class members have been deprived of their right to
15 control the dissemination and use of their respective personal information and communications.

16 Notwithstanding and subject to these objections, Plaintiff Byatt responds that, to the best
17 of his recollection, he has not directly paid any money to Google to use Chrome. Plaintiff has,
18 however, provided valuable consideration in the form of his personal information for the use of
19 Google products, but Google unlawfully intercepted, collected data from, analyzed, and monetized
20 Plaintiff's browsing activity conducted in private browsing mode, the value of which has been
21 diminished and Google has used to its benefit to increase its profits and revenues from targeted
22 advertising and improvements of Google's other products. Otherwise denied.

23 **REQUEST FOR ADMISSION NO. 27:**

24 Admit that YOU have never paid any money to Google to use GMAIL.

25 **RESPONSE TO REQUEST FOR ADMISSION NO. 27:**

26 Plaintiff Byatt objects to this Request as irrelevant, as Gmail is not at issue in this litigation.
27 Plaintiff further objects to this Request to the extent it purports to suggest that monetary payment
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1 to Google is a necessary predicate for any claim in this litigation. Plaintiff and class members
2 provided valuable consideration in the form of their respective personal information they agreed
3 to share with Google in non-private browsing mode, which has ascertainable and demonstrated
4 value by its use and sale by Google. Because Google unlawfully intercepted, collected data from,
5 analyzed, and monetized Plaintiff's (and class members') browsing activity conducted in private
6 browsing mode, this private and personally identifiable data and content has been diminished in
7 value, and Plaintiff and class members have been deprived of their right to control the
8 dissemination and use of their respective personal information and communications.

9 Notwithstanding and subject to these objections, Plaintiff Byatt responds that, to the best
10 of his recollection, he has not directly paid any money to Google to use Gmail. Plaintiff has,
11 however, provided valuable consideration in the form of his personal information for the use of
12 Google products, but Google unlawfully intercepted, collected data from, analyzed, and monetized
13 Plaintiff's browsing activity conducted in private browsing mode, the value of which has been
14 diminished and Google has used to its benefit to increase its profits and revenues from targeted
15 advertising and improvements of Google's other products. Otherwise denied.

16 **REQUEST FOR ADMISSION NO. 28:**

17 Admit that YOU have never paid any money to Google to use any SERVICES offered by
18 Google.

19 **RESPONSE TO REQUEST FOR ADMISSION NO. 28:**

20 Plaintiff Byatt objects to the term "Services" insofar as it is irrelevant, vague, and
21 ambiguous, as Google has defined it to include a non-exhaustive list of "Google apps, sites, and
22 devices, like Search, YouTube, and Google Home, Google platforms like the Chrome browser and
23 Android operating system, and Google products that are integrated into third-party apps and sites,
24 like ads and embedded Google Maps." Plaintiff's use of YouTube, Maps, and other irrelevant
25 "services" are not at issue in this litigation. Plaintiff further objects to this Request to the extent it
26 purports to suggest that monetary payment to Google is a necessary predicate for any claim in this
27 litigation. Plaintiff and class members provided valuable consideration in the form of their
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1 respective personal information they agreed to share with Google in non-private browsing mode,
2 which has ascertainable and demonstrated value by its use and sale by Google. Because Google
3 unlawfully intercepted, collected data from, analyzed, and monetized Plaintiff's (and class
4 members') browsing activity conducted in private browsing mode, this private and personally
5 identifiable data and content has been diminished in value, and Plaintiff and class members have
6 been deprived of their right to control the dissemination and use of their respective personal
7 information and communications.

8 Notwithstanding and subject to these objections, Plaintiff Byatt responds that, to the best
9 of his recollection, he has paid to Google approximately [REDACTED] per month for Google One (since
10 approximately [REDACTED] per month for YouTube Premium (since approximately [REDACTED]
11 as a Google Play Music subscriber, which was converted into a YouTube premium subscription in
12 approximately [REDACTED] and approximately [REDACTED] per month for Google Fi (since
13 approximately [REDACTED] Additionally, Plaintiff has provided valuable consideration in the
14 form of his personal information for the use of Google products, but Google unlawfully
15 intercepted, collected data from, analyzed, and monetized Plaintiff's browsing activity conducted
16 in private browsing mode, the value of which has been diminished and Google has used to its
17 benefit to increase its profits and revenues from targeted advertising and improvements of
18 Google's other products. Otherwise denied.

19 **REQUEST FOR ADMISSION NO. 29:**

20 Admit that in YOUR GOOGLE ACCOUNT WEB & APP ACTIVITY SETTINGS, YOU
21 consented to Google saving information about your activity on sites that use Google services in
22 Your Google Account.

23 **RESPONSE TO REQUEST FOR ADMISSION NO. 29:**

24 Plaintiff Byatt objects to this Request as irrelevant, as Web & App Activity is not at issue
25 in this litigation. Otherwise denied.
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27
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Dated: July 30, 2021

MORGAN & MORGAN

/s/ John A. Yanchunis

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Attorneys for Plaintiffs

PROOF OF SERVICE

I, Jennifer Cabezas, declare:

I am a citizen of the United States and employed in the County of Hillsborough, Florida. I am over the age of 18 and not a party to the within action; my business address is 201 N. Franklin St., 7th Floor, Tampa, FL 33602.

On July 30, 2021, I served the following document described as:

Plaintiff's Objections and Responses to Defendant's Third Set of Requests for Admission

By electronic mail transmission from jcabezas@forthepeople.com on July 30, 2021, by transmitting a PDF format copy of such document to each person at the e-mail addresses listed below. The document was transmitted by electronic transmission and such transmission was reported as complete and without error:

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16 *Attorneys for Defendant*

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23 jonathantse@quinnemanuel.com

24 *Attorneys for Defendant*

25 Executed on July 30, 2021, at Tampa, Florida.

26 /s/ Jennifer Cabezas
27 Jennifer Cabezas
28

EXHIBIT 12

PLAINTIFF CHRISTOPHER CASTILLO'S OBJECTIONS AND RESPONSES TO DEFENDANT'S THIRD SET OF REQUESTS FOR ADMISSION

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

CHASOM BROWN, WILLIAM BYATT,
JEREMY DAVIS, CHRISTOPHER
CASTILLO, and MONIQUE TRUJILLO
individually and on behalf of all other
similarly situated,

Plaintiffs,

v.

GOOGLE LLC,

Defendant.

Case No. 5:20-cv-03664-LHK-SVK

**PLAINTIFF CHRISTOPHER CASTILLO’S OBJECTIONS AND RESPONSES
TO DEFENDANT’S THIRD SET OF REQUESTS FOR ADMISSION**

Pursuant to Federal Rule of Civil Procedure Rule 36, Plaintiff Christopher Castillo (“Castillo”) hereby objects and responds to Defendant’s, Google LLC (“Google”), Third Set of Requests for Admission (Nos. 22–29). These objections and responses are made solely for the purpose of and in relation to this action. In addition, the objections and responses set forth in this document are based on Plaintiff Castillo’s knowledge, investigations, and analysis to date. As discovery proceeds, Plaintiff Castillo may become aware of additional facts or evidence and his analysis of the case may change. Plaintiff Castillo reserves all rights to supplement and amend his objections and responses accordingly.

REQUEST FOR ADMISSION NO. 22:

Admit that, when YOU signed up for YOUR GOOGLE ACCOUNT, YOU agreed to the terms of Google’s then-current TERMS OF SERVICE.

RESPONSE TO REQUEST FOR ADMISSION NO. 22:

Plaintiff Castillo objects to this Request to the extent it purports to suggest that agreement to Google’s Terms of Service is a necessary predicate for any claim in this litigation (aside from breach of contract). Plaintiff’s allegations relate to Google’s conduct of secretly and unlawfully

1 intercepting, collecting data from, analyzing, and monetizing Plaintiff's (and class members')
2 browsing activity conducted in private browsing mode, despite Google's representations
3 (including without limitation in the Incognito private browsing mode) that private browsing mode
4 was private and that Plaintiff's (and class members') private browsing information would not be
5 collected by Google. Users did not need any Google account to browse privately, using Incognito
6 mode or otherwise. Further, to the best of Plaintiff's knowledge, he has never logged into any
7 Google accounts in Chrome when using Chrome's private browsing mode.

8
9 Notwithstanding and subject to these objections, Plaintiff Castillo admits that, when he
10 signed up for his Google Account, although he does not recall the exact details of the then-current
11 Terms of Service, he indicated to Google that he generally agreed to Google's then-current Terms
12 of Service—which incorporates the Google Chrome and Chrome OS Additional Terms of Service,
13 the Chrome Privacy Notice, the Privacy Policy, the "Search & Browse Privately" page, and the
14 Incognito Screen—and he recalls the disclosures promising that Google would not intercept and
15 collect his private browsing activity, and he did not consent to that interception and collection.
16 Otherwise Denied.

17 **REQUEST FOR ADMISSION NO. 23:**

18 Admit that, when YOU signed up for YOUR GOOGLE ACCOUNT, YOU agreed to the
19 terms of Google's then-current PRIVACY POLICY.

20 **RESPONSE TO REQUEST FOR ADMISSION NO. 23:**

21 Plaintiff Castillo objects to this Request to the extent it purports to suggest that agreement
22 to Google's Privacy Policy is a necessary predicate for any claim in this litigation (aside from
23 breach of contract). Plaintiff's allegations relate to Google's conduct of secretly and unlawfully
24 intercepting, collecting data from, analyzing, and monetizing Plaintiff's (and class members')
25 browsing activity conducted in private browsing mode, despite Google's representations
26 (including without limitation in the Incognito private browsing mode) that private browsing mode
27 was private and that Plaintiff's (and class members') private browsing information would not be
28 collected by Google. Users did not need any Google account to browse privately, using Incognito

1 mode or otherwise. Further, to the best of Plaintiff's knowledge, he has never logged into any
2 Google accounts in Chrome when using Chrome's private browsing mode.

3 Notwithstanding and subject to these objections, Plaintiff Castillo admits that, when he
4 signed up for his Google Account, although he does not recall the exact details of the then-current
5 Privacy Policy, he indicated to Google that he generally agreed to Google's then-current Terms of
6 Service—which incorporates the Google Chrome and Chrome OS Additional Terms of Service,
7 the Chrome Privacy Notice, the Privacy Policy, the "Search & Browse Privately" page, and the
8 Incognito Screen—and he recalls the disclosures promising that Google would not intercept and
9 collect his private browsing activity, and he did not consent to that interception and collection.
10 Otherwise Denied.

11 **REQUEST FOR ADMISSION NO. 24:**

12 Admit that, when YOU used the Chrome browser, YOU agreed to the terms of Google's
13 then-current CHROME TERMS OF SERVICE.

14 **ORIGINAL RESPONSE TO REQUEST FOR ADMISSION NO. 24:**

15 Plaintiff Castillo admits that, when he used the Chrome browser, although he does not
16 recall the exact details of the then-current Chrome Terms of Service, he indicated to Google that
17 he generally agreed to Google's then-current Chrome Terms of Service, and he recalls Google's
18 disclosures, including Google's Terms of Service, Privacy Policy, Incognito Screen, and other
19 disclosures promising that Google would not intercept and collect his private browsing activity,
20 and he did not consent to that interception and collection. Otherwise Denied.

21 **REQUEST FOR ADMISSION NO. 25:**

22 Admit that, when YOU used the Chrome browser, YOU agreed to the terms of Google's
23 then-current CHROME PRIVACY NOTICE.

24 **RESPONSE TO REQUEST FOR ADMISSION NO. 25:**

25 Plaintiff Castillo admits that, when he used the Chrome browser, although he does not
26 recall the exact details of the then-current Chrome Privacy Notice, he indicated to Google that he
27 generally agreed to Google's then-current Chrome Privacy Notice, and he recalls the disclosures,
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1 including Google's Terms of Service, Privacy Policy, Incognito Screen, and other disclosures
2 promising that Google would not intercept and collect his private browsing activity, and he did not
3 consent to that interception and collection. Otherwise Denied.

4 **REQUEST FOR ADMISSION NO. 26:**

5 Admit that YOU have never paid any money to Google to use CHROME.

6 **RESPONSE TO REQUEST FOR ADMISSION NO. 26:**

7 Plaintiff Castillo objects to this Request to the extent it purports to suggest that monetary
8 payment to Google is a necessary predicate for any claim in this litigation. Plaintiff and class
9 members provided valuable consideration in the form of their respective personal information they
10 agreed to share with Google in non-private browsing mode, which has ascertainable and
11 demonstrated value by its use and sale by Google. Because Google unlawfully intercepted,
12 collected data from, analyzed, and monetized Plaintiff's (and class members') browsing activity
13 conducted in private browsing mode, this private and personally identifiable data and content has
14 been diminished in value, and Plaintiff and class members have been deprived of their right to
15 control the dissemination and use of their respective personal information and communications.

16 Notwithstanding and subject to these objections, Plaintiff Castillo responds that, to the best
17 of his recollection, he has not directly paid any money to Google to use Chrome. Plaintiff has,
18 however, provided valuable consideration in the form of his personal information for the use of
19 Google products, but Google unlawfully intercepted, collected data from, analyzed, and monetized
20 Plaintiff's browsing activity conducted in private browsing mode, the value of which has been
21 diminished and Google has used to its benefit to increase its profits and revenues from targeted
22 advertising and improvements of Google's other products. Otherwise denied.

23 **REQUEST FOR ADMISSION NO. 27:**

24 Admit that YOU have never paid any money to Google to use GMAIL.

25 **RESPONSE TO REQUEST FOR ADMISSION NO. 27:**

26 Plaintiff Castillo objects to this Request as irrelevant, as Gmail is not at issue in this
27 litigation. Plaintiff further objects to this Request to the extent it purports to suggest that monetary
28

1 payment to Google is a necessary predicate for any claim in this litigation. Plaintiff and class
2 members provided valuable consideration in the form of their respective personal information they
3 agreed to share with Google in non-private browsing mode, which has ascertainable and
4 demonstrated value by its use and sale by Google. Because Google unlawfully intercepted,
5 collected data from, analyzed, and monetized Plaintiff's (and class members') browsing activity
6 conducted in private browsing mode, this private and personally identifiable data and content has
7 been diminished in value, and Plaintiff and class members have been deprived of their right to
8 control the dissemination and use of their respective personal information and communications.

9 Notwithstanding and subject to these objections, Plaintiff Castillo responds that, to the best
10 of his recollection, he has not directly paid any money to Google to use Gmail. Plaintiff has,
11 however, provided valuable consideration in the form of his personal information for the use of
12 Google products, but Google unlawfully intercepted, collected data from, analyzed, and monetized
13 Plaintiff's browsing activity conducted in private browsing mode, the value of which has been
14 diminished and Google has used to its benefit to increase its profits and revenues from targeted
15 advertising and improvements of Google's other products. Otherwise denied.

16 **REQUEST FOR ADMISSION NO. 28:**

17 Admit that YOU have never paid any money to Google to use any SERVICES offered by
18 Google.

19 **RESPONSE TO REQUEST FOR ADMISSION NO. 28:**

20 Plaintiff Castillo objects to the term "Services" insofar as it is irrelevant, vague, and
21 ambiguous, as Google has defined it to include a non-exhaustive list of "Google apps, sites, and
22 devices, like Search, YouTube, and Google Home, Google platforms like the Chrome browser and
23 Android operating system, and Google products that are integrated into third-party apps and sites,
24 like ads and embedded Google Maps." Plaintiff's use of YouTube, Maps, and other irrelevant
25 "services" are not at issue in this litigation. Plaintiff further objects to this Request to the extent it
26 purports to suggest that monetary payment to Google is a necessary predicate for any claim in this
27 litigation. Plaintiff and class members provided valuable consideration in the form of their
28

1 respective personal information they agreed to share with Google in non-private browsing mode,
2 which has ascertainable and demonstrated value by its use and sale by Google. Because Google
3 unlawfully intercepted, collected data from, analyzed, and monetized Plaintiff's (and class
4 members') browsing activity conducted in private browsing mode, this private and personally
5 identifiable data and content has been diminished in value, and Plaintiff and class members have
6 been deprived of their right to control the dissemination and use of their respective personal
7 information and communications.

8 Notwithstanding and subject to these objections, Plaintiff Castillo responds that, to the best
9 of his recollection, he has not directly paid any money to Google to use services offered by Google.
10 Plaintiff has, however, provided valuable consideration in the form of his personal information for
11 the use of Google products, but Google unlawfully intercepted, collected data from, analyzed, and
12 monetized Plaintiff's browsing activity conducted in private browsing mode, the value of which
13 has been diminished and Google has used to its benefit to increase its profits and revenues from
14 targeted advertising and improvements of Google's other products. Otherwise denied.

15 **REQUEST FOR ADMISSION NO. 29:**

16 Admit that in YOUR GOOGLE ACCOUNT WEB & APP ACTIVITY SETTINGS, YOU
17 consented to Google saving information about your activity on sites that use Google services in
18 Your Google Account.

19 **RESPONSE TO REQUEST FOR ADMISSION NO. 29:**

20 Plaintiff Castillo objects to this Request as irrelevant, as Web & App Activity is not at issue
21 in this litigation. Otherwise denied.
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Dated: July 30, 2021

MORGAN & MORGAN

/s/ John A. Yanchunis

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Attorneys for Plaintiffs

PROOF OF SERVICE

I, Jennifer Cabezas, declare:

I am a citizen of the United States and employed in the County of Hillsborough, Florida. I am over the age of 18 and not a party to the within action; my business address is 201 N. Franklin St., 7th Floor, Tampa, FL 33602.

On July 30, 2021, I served the following document described as:

Plaintiff's Objections and Responses to Defendant's Third Set of Requests for Admission

By electronic mail transmission from jcabezas@forthepeople.com on July 30, 2021, by transmitting a PDF format copy of such document to each person at the e-mail addresses listed below. The document was transmitted by electronic transmission and such transmission was reported as complete and without error:

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24 *Attorneys for Defendant*

25 Executed on July 30, 2021, at Tampa, Florida.

26
27 /s/ Jennifer Cabezas
28 Jennifer Cabezas

EXHIBIT 13

PLAINTIFF JEREMY DAVIS' OBJECTIONS AND RESPONSES TO DEFENDANT'S THIRD SET OF REQUESTS FOR ADMISSION

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

CHASOM BROWN, WILLIAM BYATT,
JEREMY DAVIS, CHRISTOPHER
CASTILLO, and MONIQUE TRUJILLO
individually and on behalf of all other
similarly situated,

Plaintiffs,

v.

GOOGLE LLC,

Defendant.

Case No. 5:20-cv-03664-LHK-SVK

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**PLAINTIFF JEREMY DAVIS' OBJECTIONS AND RESPONSES
TO DEFENDANT'S THIRD SET OF REQUESTS FOR ADMISSION**

Pursuant to Federal Rule of Civil Procedure Rule 36, Plaintiff Jeremy Davis ("Davis") hereby objects and responds to Defendant's, Google LLC ("Google"), Third Set of Requests for Admission (Nos. 22–29). These objections and responses are made solely for the purpose of and in relation to this action. In addition, the objections and responses set forth in this document are based on Plaintiff Davis' knowledge, investigations, and analysis to date. As discovery proceeds, Plaintiff Davis may become aware of additional facts or evidence and his analysis of the case may change. Plaintiff Davis reserves all rights to supplement and amend his objections and responses accordingly.

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REQUEST FOR ADMISSION NO. 22:

Admit that, when YOU signed up for YOUR GOOGLE ACCOUNT, YOU agreed to the terms of Google's then-current TERMS OF SERVICE.

RESPONSE TO REQUEST FOR ADMISSION NO. 22:

Plaintiff Davis objects to this Request to the extent it purports to suggest that agreement to Google's Terms of Service is a necessary predicate for any claim in this litigation (aside from breach of contract). Plaintiff's allegations relate to Google's conduct of secretly and unlawfully

1 intercepting, collecting data from, analyzing, and monetizing Plaintiff's (and class members')
2 browsing activity conducted in private browsing mode, despite Google's representations
3 (including without limitation in the Incognito private browsing mode) that private browsing mode
4 was private and that Plaintiff's (and class members') private browsing information would not be
5 collected by Google. Users did not need any Google account to browse privately, using Incognito
6 mode or otherwise. Further, to the best of Plaintiff's knowledge, he has never logged into any
7 Google accounts in Chrome when using Chrome's private browsing mode.

8
9 Notwithstanding and subject to these objections, Plaintiff Davis admits that, when he
10 signed up for his Google Account, although he does not recall the exact details of the then-current
11 Terms of Service, he indicated to Google that he generally agreed to Google's then-current Terms
12 of Service—which incorporates the Google Chrome and Chrome OS Additional Terms of Service,
13 the Chrome Privacy Notice, the Privacy Policy, the "Search & Browse Privately" page, and the
14 Incognito Screen—and he recalls the disclosures promising that Google would not intercept and
15 collect his private browsing activity, and he did not consent to that interception and collection.
16 Otherwise Denied.

17 **REQUEST FOR ADMISSION NO. 23:**

18 Admit that, when YOU signed up for YOUR GOOGLE ACCOUNT, YOU agreed to the
19 terms of Google's then-current PRIVACY POLICY.

20 **RESPONSE TO REQUEST FOR ADMISSION NO. 23:**

21 Plaintiff Davis objects to this Request to the extent it purports to suggest that agreement to
22 Google's Privacy Policy is a necessary predicate for any claim in this litigation (aside from breach
23 of contract). Plaintiff's allegations relate to Google's conduct of secretly and unlawfully
24 intercepting, collecting data from, analyzing, and monetizing Plaintiff's (and class members')
25 browsing activity conducted in private browsing mode, despite Google's representations
26 (including without limitation in the Incognito private browsing mode) that private browsing mode
27 was private and that Plaintiff's (and class members') private browsing information would not be
28 collected by Google. Users did not need any Google account to browse privately, using Incognito

1 mode or otherwise. Further, to the best of Plaintiff's knowledge, he has never logged into any
2 Google accounts in Chrome when using Chrome's private browsing mode.

3 Notwithstanding and subject to these objections, Plaintiff Davis admits that, when he
4 signed up for his Google Account, although he does not recall the exact details of the then-current
5 Privacy Policy, he indicated to Google that he generally agreed to Google's then-current Terms of
6 Service—which incorporates the Google Chrome and Chrome OS Additional Terms of Service,
7 the Chrome Privacy Notice, the Privacy Policy, the "Search & Browse Privately" page, and the
8 Incognito Screen—and he recalls the disclosures promising that Google would not intercept and
9 collect his private browsing activity, and he did not consent to that interception and collection.
10 Otherwise Denied.

11 **REQUEST FOR ADMISSION NO. 24:**

12 Admit that, when YOU used the Chrome browser, YOU agreed to the terms of Google's
13 then-current CHROME TERMS OF SERVICE.

14 **ORIGINAL RESPONSE TO REQUEST FOR ADMISSION NO. 24:**

15 Plaintiff Davis admits that, when he used the Chrome browser, although he does not recall
16 the exact details of the then-current Chrome Terms of Service, he indicated to Google that he
17 generally agreed to Google's then-current Chrome Terms of Service, and he recalls Google's
18 disclosures, including Google's Terms of Service, Privacy Policy, Incognito Screen, and other
19 disclosures promising that Google would not intercept and collect his private browsing activity,
20 and he did not consent to that interception and collection. Otherwise Denied.

21 **REQUEST FOR ADMISSION NO. 25:**

22 Admit that, when YOU used the Chrome browser, YOU agreed to the terms of Google's
23 then-current CHROME PRIVACY NOTICE.

24 **RESPONSE TO REQUEST FOR ADMISSION NO. 25:**

25 Plaintiff Davis admits that, when he used the Chrome browser, although he does not recall
26 the exact details of the then-current Chrome Privacy Notice, he indicated to Google that he
27 generally agreed to Google's then-current Chrome Privacy Notice, and he recalls the disclosures,
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1 including Google's Terms of Service, Privacy Policy, Incognito Screen, and other disclosures
2 promising that Google would not intercept and collect his private browsing activity, and he did not
3 consent to that interception and collection. Otherwise Denied.

4 **REQUEST FOR ADMISSION NO. 26:**

5 Admit that YOU have never paid any money to Google to use CHROME.

6 **RESPONSE TO REQUEST FOR ADMISSION NO. 26:**

7 Plaintiff Davis objects to this Request to the extent it purports to suggest that monetary
8 payment to Google is a necessary predicate for any claim in this litigation. Plaintiff and class
9 members provided valuable consideration in the form of their respective personal information they
10 agreed to share with Google in non-private browsing mode, which has ascertainable and
11 demonstrated value by its use and sale by Google. Because Google unlawfully intercepted,
12 collected data from, analyzed, and monetized Plaintiff's (and class members') browsing activity
13 conducted in private browsing mode, this private and personally identifiable data and content has
14 been diminished in value, and Plaintiff and class members have been deprived of their right to
15 control the dissemination and use of their respective personal information and communications.

16 Notwithstanding and subject to these objections, Plaintiff Davis responds that, to the best
17 of his recollection, he has not directly paid any money to Google to use Chrome. Plaintiff has,
18 however, provided valuable consideration in the form of his personal information for the use of
19 Google products, but Google unlawfully intercepted, collected data from, analyzed, and monetized
20 Plaintiff's browsing activity conducted in private browsing mode, the value of which has been
21 diminished and Google has used to its benefit to increase its profits and revenues from targeted
22 advertising and improvements of Google's other products. Otherwise denied.

23 **REQUEST FOR ADMISSION NO. 27:**

24 Admit that YOU have never paid any money to Google to use GMAIL.

25 **RESPONSE TO REQUEST FOR ADMISSION NO. 27:**

26 Plaintiff Davis objects to this Request as irrelevant, as Gmail is not at issue in this litigation.
27 Plaintiff further objects to this Request to the extent it purports to suggest that monetary payment
28

1 to Google is a necessary predicate for any claim in this litigation. Plaintiff and class members
2 provided valuable consideration in the form of their respective personal information they agreed
3 to share with Google in non-private browsing mode, which has ascertainable and demonstrated
4 value by its use and sale by Google. Because Google unlawfully intercepted, collected data from,
5 analyzed, and monetized Plaintiff's (and class members') browsing activity conducted in private
6 browsing mode, this private and personally identifiable data and content has been diminished in
7 value, and Plaintiff and class members have been deprived of their right to control the
8 dissemination and use of their respective personal information and communications.

9 Notwithstanding and subject to these objections, Plaintiff Davis responds that, to the best
10 of his recollection, he has not directly paid any money to Google to use Gmail. Plaintiff has,
11 however, provided valuable consideration in the form of his personal information for the use of
12 Google products, but Google unlawfully intercepted, collected data from, analyzed, and monetized
13 Plaintiff's browsing activity conducted in private browsing mode, the value of which has been
14 diminished and Google has used to its benefit to increase its profits and revenues from targeted
15 advertising and improvements of Google's other products. Otherwise denied.

16 **REQUEST FOR ADMISSION NO. 28:**

17 Admit that YOU have never paid any money to Google to use any SERVICES offered by
18 Google.

19 **RESPONSE TO REQUEST FOR ADMISSION NO. 28:**

20 Plaintiff Davis objects to the term "Services" insofar as it is irrelevant, vague, and
21 ambiguous, as Google has defined it to include a non-exhaustive list of "Google apps, sites, and
22 devices, like Search, YouTube, and Google Home, Google platforms like the Chrome browser and
23 Android operating system, and Google products that are integrated into third-party apps and sites,
24 like ads and embedded Google Maps." Plaintiff's use of YouTube, Maps, and other irrelevant
25 "services" are not at issue in this litigation. Plaintiff further objects to this Request to the extent it
26 purports to suggest that monetary payment to Google is a necessary predicate for any claim in this
27 litigation. Plaintiff and class members provided valuable consideration in the form of their
28

1 respective personal information they agreed to share with Google in non-private browsing mode,
2 which has ascertainable and demonstrated value by its use and sale by Google. Because Google
3 unlawfully intercepted, collected data from, analyzed, and monetized Plaintiff's (and class
4 members') browsing activity conducted in private browsing mode, this private and personally
5 identifiable data and content has been diminished in value, and Plaintiff and class members have
6 been deprived of their right to control the dissemination and use of their respective personal
7 information and communications.

8 Notwithstanding and subject to these objections, Plaintiff Davis responds that, to the best
9 of his recollection, he has not directly paid any money to Google to use services offered by Google.
10 Plaintiff has, however, provided valuable consideration in the form of his personal information for
11 the use of Google products, but Google unlawfully intercepted, collected data from, analyzed, and
12 monetized Plaintiff's browsing activity conducted in private browsing mode, the value of which
13 has been diminished and Google has used to its benefit to increase its profits and revenues from
14 targeted advertising and improvements of Google's other products. Otherwise denied.

15 **REQUEST FOR ADMISSION NO. 29:**

16 Admit that in YOUR GOOGLE ACCOUNT WEB & APP ACTIVITY SETTINGS, YOU
17 consented to Google saving information about your activity on sites that use Google services in
18 Your Google Account.

19 **RESPONSE TO REQUEST FOR ADMISSION NO. 29:**

20 Plaintiff Davis objects to this Request as irrelevant, as Web & App Activity is not at issue
21 in this litigation. Otherwise denied.
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Dated: July 30, 2021

MORGAN & MORGAN

/s/ John A. Yanchunis

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Attorneys for Plaintiffs

PROOF OF SERVICE

I, Jennifer Cabezas, declare:

I am a citizen of the United States and employed in the County of Hillsborough, Florida. I am over the age of 18 and not a party to the within action; my business address is 201 N. Franklin St., 7th Floor, Tampa, FL 33602.

On July 30, 2021, I served the following document described as:

Plaintiff's Objections and Responses to Defendant's Third Set of Requests for Admission

By electronic mail transmission from jcabezas@forthepeople.com on July 30, 2021, by transmitting a PDF format copy of such document to each person at the e-mail addresses listed below. The document was transmitted by electronic transmission and such transmission was reported as complete and without error:

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15 josefansorge@quinnemanuel.com

16 *Attorneys for Defendant*

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22 Fax: 415-875-6700
23 jonathantse@quinnemanuel.com

24 *Attorneys for Defendant*

25 Executed on July 30, 2021, at Tampa, Florida.

26
27 /s/ Jennifer Cabezas
28 Jennifer Cabezas

EXHIBIT 14

PLAINTIFF MONIQUE TRUJILLO'S OBJECTIONS AND RESPONSES TO DEFENDANT'S THIRD SET OF REQUESTS FOR ADMISSION

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

CHASOM BROWN, WILLIAM BYATT,
JEREMY DAVIS, CHRISTOPHER
CASTILLO, and MONIQUE TRUJILLO
individually and on behalf of all other
similarly situated,

Plaintiffs,

v.

GOOGLE LLC,

Defendant.

Case No. 5:20-cv-03664-LHK-SVK

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**PLAINTIFF MONIQUE TRUJILLO’S OBJECTIONS AND RESPONSES
TO DEFENDANT’S THIRD SET OF REQUESTS FOR ADMISSION**

Pursuant to Federal Rule of Civil Procedure Rule 36, Plaintiff Monique Trujillo (“Trujillo”) hereby objects and responds to Defendant’s, Google LLC (“Google”), Third Set of Requests for Admission (Nos. 22–29). These objections and responses are made solely for the purpose of and in relation to this action. In addition, the objections and responses set forth in this document are based on Plaintiff Trujillo’s knowledge, investigations, and analysis to date. As discovery proceeds, Plaintiff Trujillo may become aware of additional facts or evidence and her analysis of the case may change. Plaintiff Trujillo reserves all rights to supplement and amend her objections and responses accordingly.

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REQUEST FOR ADMISSION NO. 22:

Admit that, when YOU signed up for YOUR GOOGLE ACCOUNT, YOU agreed to the terms of Google’s then-current TERMS OF SERVICE.

RESPONSE TO REQUEST FOR ADMISSION NO. 22:

Plaintiff Trujillo objects to this Request to the extent it purports to suggest that agreement to Google’s Terms of Service is a necessary predicate for any claim in this litigation (aside from breach of contract). Plaintiff’s allegations relate to Google’s conduct of secretly and unlawfully

1 intercepting, collecting data from, analyzing, and monetizing Plaintiff's (and class members')
2 browsing activity conducted in private browsing mode, despite Google's representations
3 (including without limitation in the Incognito private browsing mode) that private browsing mode
4 was private and that Plaintiff's (and class members') private browsing information would not be
5 collected by Google. Users did not need any Google account to browse privately, using Incognito
6 mode or otherwise. Further, to the best of Plaintiff's knowledge, he has never logged into any
7 Google accounts in Chrome when using Chrome's private browsing mode.

8
9 Notwithstanding and subject to these objections, Plaintiff Trujillo admits that, when she
10 signed up for her Google Account, although she does not recall the exact details of the then-current
11 Terms of Service, she indicated to Google that she generally agreed to Google's then-current
12 Terms of Service—which incorporates the Google Chrome and Chrome OS Additional Terms of
13 Service, the Chrome Privacy Notice, the Privacy Policy, the "Search & Browse Privately" page,
14 and the Incognito Screen—and she recalls the disclosures promising that Google would not
15 intercept and collect her private browsing activity, and she did not consent to that interception and
16 collection. Otherwise Denied.

17 **REQUEST FOR ADMISSION NO. 23:**

18 Admit that, when YOU signed up for YOUR GOOGLE ACCOUNT, YOU agreed to the
19 terms of Google's then-current PRIVACY POLICY.

20 **RESPONSE TO REQUEST FOR ADMISSION NO. 23:**

21 Plaintiff Trujillo objects to this Request to the extent it purports to suggest that agreement
22 to Google's Privacy Policy is a necessary predicate for any claim in this litigation (aside from
23 breach of contract). Plaintiff's allegations relate to Google's conduct of secretly and unlawfully
24 intercepting, collecting data from, analyzing, and monetizing Plaintiff's (and class members')
25 browsing activity conducted in private browsing mode, despite Google's representations
26 (including without limitation in the Incognito private browsing mode) that private browsing mode
27 was private and that Plaintiff's (and class members') private browsing information would not be
28 collected by Google. Users did not need any Google account to browse privately, using Incognito

1 mode or otherwise. Further, to the best of Plaintiff's knowledge, he has never logged into any
2 Google accounts in Chrome when using Chrome's private browsing mode.

3 Notwithstanding and subject to these objections, Plaintiff Trujillo admits that, when she
4 signed up for her Google Account, although she does not recall the exact details of the then-current
5 Privacy Policy, she indicated to Google that she generally agreed to Google's then-current Terms
6 of Service—which incorporates the Google Chrome and Chrome OS Additional Terms of Service,
7 the Chrome Privacy Notice, the Privacy Policy, the "Search & Browse Privately" page, and the
8 Incognito Screen—and she recalls the disclosures promising that Google would not intercept and
9 collect her private browsing activity, and she did not consent to that interception and collection.
10 Otherwise Denied.

11 **REQUEST FOR ADMISSION NO. 24:**

12 Admit that, when YOU used the Chrome browser, YOU agreed to the terms of Google's
13 then-current CHROME TERMS OF SERVICE.

14 **ORIGINAL RESPONSE TO REQUEST FOR ADMISSION NO. 24:**

15 Plaintiff Trujillo admits that, when she used the Chrome browser, although she does not
16 recall the exact details of the then-current Chrome Terms of Service, she indicated to Google that
17 she generally agreed to Google's then-current Chrome Terms of Service, and she recalls Google's
18 disclosures, including Google's Terms of Service, Privacy Policy, Incognito Screen, and other
19 disclosures promising that Google would not intercept and collect her private browsing activity,
20 and she did not consent to that interception and collection. Otherwise Denied.

21 **REQUEST FOR ADMISSION NO. 25:**

22 Admit that, when YOU used the Chrome browser, YOU agreed to the terms of Google's
23 then-current CHROME PRIVACY NOTICE.

24 **RESPONSE TO REQUEST FOR ADMISSION NO. 25:**

25 Plaintiff Trujillo admits that, when she used the Chrome browser, although she does not
26 recall the exact details of the then-current Chrome Privacy Notice, she indicated to Google that
27 she generally agreed to Google's then-current Chrome Privacy Notice, and she recalls the
28

1 disclosures, including Google's Terms of Service, Privacy Policy, Incognito Screen, and other
2 disclosures promising that Google would not intercept and collect her private browsing activity,
3 and she did not consent to that interception and collection. Otherwise Denied.

4 **REQUEST FOR ADMISSION NO. 26:**

5 Admit that YOU have never paid any money to Google to use CHROME.

6 **RESPONSE TO REQUEST FOR ADMISSION NO. 26:**

7 Plaintiff Trujillo objects to this Request to the extent it purports to suggest that monetary
8 payment to Google is a necessary predicate for any claim in this litigation. Plaintiff and class
9 members provided valuable consideration in the form of their respective personal information they
10 agreed to share with Google in non-private browsing mode, which has ascertainable and
11 demonstrated value by its use and sale by Google. Because Google unlawfully intercepted,
12 collected data from, analyzed, and monetized Plaintiff's (and class members') browsing activity
13 conducted in private browsing mode, this private and personally identifiable data and content has
14 been diminished in value, and Plaintiff and class members have been deprived of their right to
15 control the dissemination and use of their respective personal information and communications.

16 Notwithstanding and subject to these objections, Plaintiff Trujillo responds that, to the best
17 of her recollection, she has not directly paid any money to Google to use Chrome. Plaintiff has,
18 however, provided valuable consideration in the form of her personal information for the use of
19 Google products, but Google unlawfully intercepted, collected data from, analyzed, and monetized
20 Plaintiff's browsing activity conducted in private browsing mode, the value of which has been
21 diminished and Google has used to its benefit to increase its profits and revenues from targeted
22 advertising and improvements of Google's other products. Otherwise denied.

23 **REQUEST FOR ADMISSION NO. 27:**

24 Admit that YOU have never paid any money to Google to use GMAIL.

25 **RESPONSE TO REQUEST FOR ADMISSION NO. 27:**

26 Plaintiff Trujillo objects to this Request as irrelevant, as Gmail is not at issue in this
27 litigation. Plaintiff further objects to this Request to the extent it purports to suggest that monetary
28

1 payment to Google is a necessary predicate for any claim in this litigation. Plaintiff and class
2 members provided valuable consideration in the form of their respective personal information they
3 agreed to share with Google in non-private browsing mode, which has ascertainable and
4 demonstrated value by its use and sale by Google. Because Google unlawfully intercepted,
5 collected data from, analyzed, and monetized Plaintiff's (and class members') browsing activity
6 conducted in private browsing mode, this private and personally identifiable data and content has
7 been diminished in value, and Plaintiff and class members have been deprived of their right to
8 control the dissemination and use of their respective personal information and communications.

9 Notwithstanding and subject to these objections, Plaintiff Trujillo responds that, to the best
10 of her recollection, she has not directly paid any money to Google to use Gmail. Plaintiff has,
11 however, provided valuable consideration in the form of her personal information for the use of
12 Google products, but Google unlawfully intercepted, collected data from, analyzed, and monetized
13 Plaintiff's browsing activity conducted in private browsing mode, the value of which has been
14 diminished and Google has used to its benefit to increase its profits and revenues from targeted
15 advertising and improvements of Google's other products. Otherwise denied.

16 **REQUEST FOR ADMISSION NO. 28:**

17 Admit that YOU have never paid any money to Google to use any SERVICES offered by
18 Google.

19 **RESPONSE TO REQUEST FOR ADMISSION NO. 28:**

20 Plaintiff Trujillo objects to the term "Services" insofar as it is irrelevant, vague, and
21 ambiguous, as Google has defined it to include a non-exhaustive list of "Google apps, sites, and
22 devices, like Search, YouTube, and Google Home, Google platforms like the Chrome browser and
23 Android operating system, and Google products that are integrated into third-party apps and sites,
24 like ads and embedded Google Maps." Plaintiff's use of YouTube, Maps, and other irrelevant
25 "services" are not at issue in this litigation. Plaintiff further objects to this Request to the extent it
26 purports to suggest that monetary payment to Google is a necessary predicate for any claim in this
27 litigation. Plaintiff and class members provided valuable consideration in the form of their
28

1 respective personal information they agreed to share with Google in non-private browsing mode,
2 which has ascertainable and demonstrated value by its use and sale by Google. Because Google
3 unlawfully intercepted, collected data from, analyzed, and monetized Plaintiff's (and class
4 members') browsing activity conducted in private browsing mode, this private and personally
5 identifiable data and content has been diminished in value, and Plaintiff and class members have
6 been deprived of their right to control the dissemination and use of their respective personal
7 information and communications.

8 Notwithstanding and subject to these objections, Plaintiff Trujillo responds that, to the best
9 of her recollection, she has not directly paid any money to Google to use services offered by
10 Google. Plaintiff has, however, provided valuable consideration in the form of her personal
11 information for the use of Google products, but Google unlawfully intercepted, collected data
12 from, analyzed, and monetized Plaintiff's browsing activity conducted in private browsing mode,
13 the value of which has been diminished and Google has used to its benefit to increase its profits
14 and revenues from targeted advertising and improvements of Google's other products. Otherwise
15 denied.

16 **REQUEST FOR ADMISSION NO. 29:**

17 Admit that in YOUR GOOGLE ACCOUNT WEB & APP ACTIVITY SETTINGS, YOU
18 consented to Google saving information about your activity on sites that use Google services in
19 Your Google Account.

20 **RESPONSE TO REQUEST FOR ADMISSION NO. 29:**

21 Plaintiff Trujillo objects to this Request as irrelevant, as Web & App Activity is not at issue
22 in this litigation. Otherwise denied.
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Dated: July 30, 2021

MORGAN & MORGAN

/s/ John A. Yanchunis

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Attorneys for Plaintiffs

PROOF OF SERVICE

I, Jennifer Cabezas, declare:

I am a citizen of the United States and employed in the County of Hillsborough, Florida. I am over the age of 18 and not a party to the within action; my business address is 201 N. Franklin St., 7th Floor, Tampa, FL 33602.

On July 30, 2021, I served the following document described as:

Plaintiff's Objections and Responses to Defendant's Third Set of Requests for Admission

By electronic mail transmission from jcabezas@forthepeople.com on July 30, 2021, by transmitting a PDF format copy of such document to each person at the e-mail addresses listed below. The document was transmitted by electronic transmission and such transmission was reported as complete and without error:

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25 Executed on July 30, 2021, at Tampa, Florida.

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27 /s/ Jennifer Cabezas
28 Jennifer Cabezas

EXHIBIT 15

DEFENDANT'S RESPONSES AND OBJECTIONS TO PLAINTFFS' FIRST SET OF REQUESTS FOR ADMISSION (NOS. 1-11)

HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

CHASOM BROWN, MARIA NGUYEN,
and WILLIAM BYATT, individually and
on behalf of all other similarly situated,

Plaintiffs,

v.

GOOGLE LLC and ALPHABET INC,

Defendant.

Case No. 5:20-cv-03664-LHK

**DEFENDANT’S RESPONSES AND OBJECTIONS TO
PLAINTIFFS’ FIRST SET OF REQUESTS FOR ADMISSION (NOS. 1–11)**

Pursuant to Federal Rules of Civil Procedure Rule 36, Defendant Google LLC (“Google”) hereby responds and objects to Plaintiffs’ First Set of Requests for Admission (Nos. 1–11). These objections and responses are made solely for the purpose of and in relation to this action. In addition, the objections and responses set forth in this document are based on Google’s knowledge, investigations, and analysis to date. As discovery proceeds, Google may become aware of additional facts or evidence and its analysis of the case may change. Google reserves all rights to supplement and amend its objections and responses accordingly.

GENERAL OBJECTIONS

The following objections apply to each and every Request for Admission propounded by Plaintiffs and are incorporated into each of the specific objections by reference as if set forth fully therein:

1. Google has not completed its investigation or discovery in this litigation. Google’s Responses and Objections to Plaintiffs’ Requests are based upon the information presently known to Google and are given without prejudice to Google’s right to adduce or analyze evidence subsequent to the date of these responses. Google expressly reserves the right to revise, supplement or otherwise amend these Responses and Objections to the extent permitted by the Federal Rules of Civil Procedure, the Local Rules of Practice and Procedure for the United States District Court

HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY

1 for the Northern District of California (“Civil Local Rules”), or any discovery orders governing
2 this case.

3 2. Google objects to the Requests to the extent that they seek information shielded
4 from disclosure by the attorney-client privilege, the work-product doctrine, the settlement privilege
5 and/or any other applicable privilege or protection from discovery.

6 3. Google objects to the Requests to the extent they assume facts or legal conclusions
7 in defining the information requested. Google hereby denies any such disputed facts or legal
8 conclusions to the extent assumed by each request for admission. Any information provided by
9 Google with respect to any such request is without prejudice to this objection.

10 4. Google objects to the undefined use of the term “User data” to the extent that it is:
11 vague and ambiguous and subject to multiple interpretations; renders the Requests overly broad
12 and unduly burdensome; calls for information not within Google’s possession, custody or control;
13 and seeks, or may be construed to seek, to impose obligations inconsistent with the Federal Rules
14 of Civil Procedure, the Civil Local Rules and/or other applicable law.

15 5. Google objects to the undefined use of the term “Profiles” to the extent that it is:
16 vague and ambiguous and subject to multiple interpretations; renders the Requests overly broad
17 and unduly burdensome; calls for information not within Google’s possession, custody or control;
18 and seeks, or may be construed to seek, to impose obligations inconsistent with the Federal Rules
19 of Civil Procedure, the Civil Local Rules and/or other applicable law.

20 6. In making these objections, Google does not waive or intend to waive (a) any
21 objections as to the competency, relevance and admissibility of any information that may be
22 provided in response to these Requests, or the subject matter thereof; (b) any rights to object on
23 any ground to the use of any information that may be provided in response to the Requests, or the
24 subject matter thereof, in any subsequent proceedings, including trial of this or any other action;
25 and (c) any rights to object on any ground to any request for further responses to this or any
26 discovery request.

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REQUESTS FOR ADMISSION

Subject to the foregoing objections, Google objects and responds to Plaintiffs’ Requests for Admission as follows:

REQUEST FOR ADMISSION NO. 1:

Since at least June 1, 2016, Google has been collecting user data from users’ private browsing mode communications, including Incognito mode communications.

RESPONSE TO REQUEST FOR ADMISSION NO. 1:

Google admits that, since at least June 1, 2016, and as disclosed in Google’s Privacy Policy and other disclosures, it has received certain types of data generated when users interact with Google’s services. Google further admits that it received such data when users interacted with Google’s services while using Google’s Chrome browser in Incognito mode.

Google has insufficient facts to admit or deny this request to the extent it concerns the operation of private browsing modes in non-Google browsers that Google did not design, does not operate, and for which Google does not possess non-public information. Except as expressly admitted, Google denies this Request.

REQUEST FOR ADMISSION NO. 2:

Since at least June 1, 2016, when users in a private browsing mode (such as Incognito mode) visit a website that uses Google advertising services, a Google script attempts to cause (and in fact has caused) users’ browsers to send data to Google’s servers.

RESPONSE TO REQUEST FOR ADMISSION NO. 2:

Google admits that, since at least June 1, 2016, consistent with Google’s Privacy Policy and other disclosures about private browsing, third party websites choosing to use Google Analytics or Ads Manager services install Google code in their website for the purpose of transmitting data to Google so that Google can provide the desired services. Google further admits

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1 that Google code provided to third party websites for the purpose of providing these services is
2 not designed to differentiate between private browsing/Incognito modes and other browsing
3 modes.

4 Google has insufficient facts to admit or deny this request to the extent it asks whether
5 Google’s code has in fact caused users’ browsers to send data to Google’s servers while they were
6 using a private browsing mode in non-Google browsers that Google did not design, does not
7 operate, and for which Google does not possess non-public information. Except as expressly
8 admitted, Google denies this Request.

9

10 **REQUEST FOR ADMISSION NO. 3:**

11 Since at least June 1, 2016, Google has not disclosed to users that when users in a private
12 browsing mode (including Incognito mode) visit a website that uses Google advertising services,
13 a Google script attempts to cause (and in fact has caused) users’ browsers to send user data to
14 Google’s servers.

15

16 **RESPONSE TO REQUEST FOR ADMISSION NO. 3:**

17 Google admits that its Privacy Policy and private browsing/Incognito mode disclosures do
18 not generally use the term “script” but otherwise denies this Request. Google’s Privacy Policy and
19 other disclosures make clear that Google receives data when a user visits a website that uses
20 Google advertising services, including data sent to Google from the user’s browser, and Google’s
21 private browsing/Incognito mode disclosures do not state that using private browsing/Incognito
22 mode will prevent Google from receiving such data.

23

24 **REQUEST FOR ADMISSION NO. 4:**

25 Since at least June 1, 2016, nothing on Google’s Incognito mode splash screen disclosed
26 that Google would collect data generated by users’ Incognito mode web activity.

HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY**1 RESPONSE TO REQUEST FOR ADMISSION NO. 4:**

2 Google admits that, since June 1, 2016, the Incognito Notice (which Plaintiffs refer to as a
3 “splash screen”) has not included the phrase “Google will collect data generated by users’
4 Incognito mode web activity.” Google otherwise denies this Request. Whether Google may receive
5 data generated by users’ interactions with its services depends on (1) the particular website visited,
6 (2) the particular Google service(s) the website uses, and (3) the website’s specific settings and
7 selections for each of its Google services, and (4) the user’s settings, browser settings, and other
8 software settings and plug-ins. This information is conveyed to users in Google’s disclosures,
9 including the Privacy Policy, Google’s private browsing/Incognito disclosures, and the Incognito
10 Notice. The Incognito Notice, for example, states that a user’s activity “might still be visible to ...
11 Websites [they] visit,” which may include Google.com, other Google websites, and websites that
12 use Google’s services. In addition, the “Search & Browse Privately” page that Plaintiffs quote in
13 the First Amended Complaint links to a page titled “How private browsing works in Chrome,”
14 which similarly states that although “Incognito mode stops Chrome from saving your browsing
15 activity *to your local history*[, y]our activity ... might still be visible to: ... Websites you visit,
16 including the ads and resources used on those sites [*e.g.*, Analytics and Ad Manager].”

17
18 REQUEST FOR ADMISSION NO. 5:

19 Since at least June 1, 2016, nothing on Google’s Incognito mode splash screen disclosed
20 that Google could track a user while he or she is in Incognito mode.

21
22 RESPONSE TO REQUEST FOR ADMISSION NO. 5:

23 In addition to its General objections, Google specifically objects to the phrase “track a user
24 while he or she is in Incognito mode” as vague and ambiguous. Subject to the foregoing objections,
25 Google admits that, since June 1, 2016, the full-page Incognito Notice (which Plaintiffs refer to as
26 a “splash screen”) has not included the phrase “track a user while he or she in Incognito mode.”
27 Google otherwise denies this Request.

HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY**1 REQUEST FOR ADMISSION NO. 6:**

2 Since at least June 1, 2016, the data collected by Google in connection with users’ private
3 browsing mode communications (including Incognito mode communications) has included
4 without limitation the user’s IP address, URLs identifying what the user is viewing, referral URLs
5 that identify what a user last viewed, and user search queries.

7 RESPONSE TO REQUEST FOR ADMISSION NO. 6:

8 Google admits that, since at least June 1, 2016, depending on (1) the particular website
9 visited, (2) the particular Google service(s) the website uses, (3) the website’s specific settings and
10 selections for each of its Google services, and (4) the user settings, browser settings, and other
11 software settings and plug-ins, Google may receive through a service certain data generated by a
12 user’s interactions with the service, which data may include: IP address; the web page the user
13 viewed; referral URL; and search queries. Google admits that, to the extent it receives such data,
14 Google receives the data regardless of whether the user is in Incognito mode.

15 Google has insufficient facts to admit or deny this request to the extent it concerns the
16 operation of private browsing modes in non-Google browsers that Google did not design, does not
17 operate, and for which Google does not possess non-public information. Google otherwise denies
18 this Request.

20 REQUEST FOR ADMISSION NO. 7:

21 Since at least June 1, 2016, Google has been creating profiles for targeted advertising using
22 data collected in connection with private browsing mode communications, including Incognito
23 mode communications.

25 RESPONSE TO REQUEST FOR ADMISSION NO. 7:

26 In addition to its General Objections, Google specifically objects to the term “profiles for
27 targeted advertising” as vague and ambiguous. Subject to the foregoing objections, Google
28 responds as follows: Google admits that, when a user is signed in to his or her Google account and

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1 depending on (1) the particular website visited, (2) the particular Google service(s) the website
2 uses, and (3) the website’s specific settings and selections for each of its Google services, and
3 (4) the user’s settings, browser settings, and other software settings and plug-ins, data that Google
4 receives from its services may be associated with the user’s account and used to personalize
5 advertisements. This occurs regardless of whether the user is in Incognito mode.

6 Google further admits that, when a user is not signed into his or her Google account and
7 depending on (1) the particular website visited, (2) the particular Google service(s) the website
8 uses, and (3) the website’s specific settings and selections for each of its Google services, and
9 (4) the user’s settings, browser settings, and other software settings and plug-ins, Google may still
10 receive data from its services—including from users in Incognito mode—but cookies are used to
11 associate the data with the user’s browser or device. If Google receives such data, depending on
12 the user’s settings and plug-ins, Google may use the data associated with cookies to personalize
13 advertisements displayed to the user. When a user is in Incognito mode, cookies used to associate
14 data with the user’s browser or device are deleted after the Incognito session is closed.

15 Google has insufficient facts to admit or deny this request to the extent it concerns the
16 operation of private browsing modes in non-Google browsers that Google did not design, does not
17 operate, and for which Google does not possess non-public information. Except as expressly
18 admitted, Google denies this Request.

REQUEST FOR ADMISSION NO. 8:

21 Since at least June 1, 2016, Google has not disclosed to users that it has been creating
22 profiles for targeted advertising using data collected while users are in a private browsing mode.

RESPONSE TO REQUEST FOR ADMISSION NO. 8:

25 In addition to its General Objections, Google specifically objects to this Request on the
26 ground that the phrase “profiles for targeted advertising” is vague and ambiguous. Subject to the
27 foregoing objections, Google denies this Request. Since at least June 1, 2016, Google’s Privacy
28 Policy and other disclosures have made clear that Google may receive data from its services,

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1 including its services on third-party websites, when users interact with those services. Google’s
2 Privacy Policy and other disclosures also make clear that Google may use such data to, among
3 other things, deliver personalized advertising. Google’s private browsing/Incognito mode
4 disclosures do not state that using private browsing/Incognito mode affects whether Google
5 receives such data or uses it for advertising.

REQUEST FOR ADMISSION NO. 9:

8 Since at least June 1, 2016, Google has attempted to associate (and in fact has associated)
9 data generated by users’ private browsing mode activities with users’ individual Google accounts.

RESPONSE TO REQUEST FOR ADMISSION NO. 9:

12 Google denies that, since June 1, 2016, it has attempted to associate or has in fact associated
13 data received through its services with users’ individual Google accounts if the users were not
14 signed in to their Google accounts when they interacted with Google’s services, as Plaintiffs allege
15 here.

16 Google admits that, as disclosed in its Privacy Policy and private browsing/Incognito
17 disclosures since at least June 1, 2016, depending on the user’s settings and plug-ins, Google may
18 associate certain data it receives that is generated by the user’s interactions with Google’s services
19 when the user is logged in to his or her Google account, and that this occurs regardless of whether
20 the user is in Incognito mode.

21 Google has insufficient facts to admit or deny this request to the extent it concerns the
22 operation of private browsing modes in non-Google browsers that Google did not design, does not
23 operate, and for which Google does not possess non-public information.

REQUEST FOR ADMISSION NO. 10:

26 Since at least June 1, 2016, Google has not disclosed that it has attempted to associate (and
27 in fact has associated) data generated by users’ private browsing mode activities with users’
28 individual Google accounts.

HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY**1 RESPONSE TO REQUEST FOR ADMISSION NO. 10:**

2 Google denies that, since at least June 1, 2016, it has not disclosed that when a user is
3 logged in to his or her Google account, depending on the user’s settings and plug-ins, Google may
4 associate certain data it receives that is generated by the user’s interactions with Google’s services
5 with the user’s Google account, including when the user is in private browsing/Incognito mode.
6 This information has been disclosed in Google’s Privacy Policy and other disclosures since at least
7 June 1, 2016.

8 Google further responds that, as explained in Google’s response to Request No. 9, since
9 June 1, 2016, Google has not attempted to associate—nor has it associated—data received through
10 its services with users’ individual Google accounts if the users were not logged in to their Google
11 accounts when they interacted with the services, as Plaintiffs allege here. Accordingly, including
12 the disclosure contemplated in this Request would not make sense.

13

14 REQUEST FOR ADMISSION NO. 11:

15 Since at least June 1, 2016, Google has been earning advertising revenues using data that
16 Google collected in connection with private browsing mode communications, including Incognito
17 mode communications.

18

19 RESPONSE TO REQUEST FOR ADMISSION NO. 11:

20 In addition to its General Objections, Google specifically objects to the phrase “data that
21 Google collected in connection with private browsing mode communications, including Incognito
22 mode communications,” as vague and ambiguous. Subject to the foregoing objections, Google
23 admits that, since June 1, 2016, it has earned revenue from advertising shown to users visiting
24 websites that use Google’s advertising services, and that, depending on the user’s settings and
25 plug-ins, Google may have been able to display ads using data Google received while a user was
26 in Incognito mode.

27 Google has insufficient facts to admit or deny this request to the extent it concerns the
28 operation of private browsing modes in non-Google browsers that Google did not design, does not

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1 operate, and for which Google does not possess non-public information. Except as expressly
2 admitted, Google denies this Request.

3
4 DATED: November 6, 2020

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28

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SAN MATEO

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of San Mateo, State of California. My business address is 555 Twin Dolphin Drive, 5th Floor, Redwood Shores, California 94065.

On November 6, 2020, I served true copies of the following document(s) described as **DEFENDANT’S RESPONSES AND OBJECTIONS TO PLAINTIFFS’ FIRST SET OF REQUESTS FOR ADMISSION (NOS. 1–11)** on the interested parties in this action as follows:

SEE ATTACHED LIST

BY E-MAIL OR ELECTRONIC TRANSMISSION: I transmitted PDF format copies of the document(s) described above to the e-mail addresses on the attached Service List pursuant to the agreement between the parties to serve discovery, in lieu of other service methods, by email under Fed. R. Civ. P. 5(b)(2)(E) (*see* Joint Case Management Statement VIII(E), Docket No. 59). The documents were transmitted by electronic transmission and such transmission was reported as complete and without error.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on November 6, 2020 at San Mateo, California.

/s/ Thao Thai

Thao Thai

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SERVICE LIST

Brown v. Google LLC

Case No. 5:20-cv-03664-LHK

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EXHIBIT 16

PLAINTIFF CHASOM BROWN'S OBJECTIONS AND RESPONSES TO DEFENDANT'S FIRST SET OF INTERROGATORIES

**Redacted Version of
Document Sought to
be Sealed**

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

CHASOM BROWN, MARIA NGUYEN,
WILLIAM BYATT, JEREMY DAVIS, and
CHRISTOPHER CASTILLO, individually
and on behalf of all other similarly situated,

Plaintiffs,

v.

GOOGLE LLC,

Defendant.

Case No. 5:20-cv-03664-LHK-SVK

**PLAINTIFF CHASOM BROWN'S OBJECTIONS AND RESPONSES
TO DEFENDANT'S FIRST SET OF INTERROGATORIES**

Pursuant to Federal Rules of Civil Procedure 26 and 33, Plaintiff Chasom Brown ("Brown") hereby objects and responds to Defendant's, Google LLC ("Google"), First Set of Interrogatories (Nos. 1–6). These objections and responses are made solely for the purpose of and in relation to this action. In addition, the objections and responses set forth in this document are based on Plaintiff Brown's knowledge, investigations, and analysis to date. As discovery proceeds, Plaintiff Brown may become aware of additional facts or evidence and his analysis of the case may change. Plaintiff Brown reserves all rights to supplement and amend his objections and responses accordingly.

INTERROGATORY NO. 1:

Describe with particularity each time YOU reviewed the GOOGLE TERMS OF SERVICE, GOOGLE PRIVACY POLICY, MY GOOGLE ACTIVITY, CHROME INCOGNITO NOTICE, CHROME TERMS OF SERVICE, and/or CHROME PRIVACY NOTICE prior to the filing of the COMPLAINT and, if YOU reviewed such documents, on what date(s) and which version(s) YOU reviewed, and whether YOU reviewed the entire document(s) or only portion(s) of the document(s) (if only portion(s), describe with particularity which portion(s) you reviewed).

RESPONSE TO INTERROGATORY NO. 1:

Plaintiff Brown objects to Interrogatory No. 1 to the extent it purports to suggest that review of and consent to Google's Privacy Policy is a necessary predicate for any claim in this litigation and not proportional to the needs of this litigation. Plaintiff Brown's allegations relate to Google's conduct of secretly and unlawfully intercepting, collecting, analyzing, and monetizing Plaintiff Brown's (and class members') browsing activity conducted in private browsing mode, despite Google's representations that Plaintiff Brown's (and class members') browsing information would not be saved.

Notwithstanding and subject to these objections, Plaintiff Brown responds that he reviewed the Chrome Incognito Notice (*i.e.*, the Incognito splash screen) and Google's representations contained therein each time he began a private browsing mode session in Chrome. Plaintiff Brown further responds that, at or around the time he opened his Google Account and at times thereafter, he reviewed Google representations that she was in "control" of what information Google collects and could exercise such control by enabling private browsing mode, such as the representations outlined in paragraphs 2 and 42 of the First Amended Complaint. He understands this, along with the Chrome Incognito Notice (*i.e.*, the Incognito splash screen that he reviewed each time he began a private browsing mode session in Chrome), to be the Google Privacy Policy. He does not recall the exact dates he reviewed these disclosures. He likewise does not recall whether he reviewed the other disclosures included in this request, in part because, as described, he is not certain which specific disclosures they refer to.

INTERROGATORY NO. 2:

Describe with particularity YOUR use of CHROME, including: the date YOU first began using CHROME on each device (*e.g.*, mobile devices, tablets, laptops, and/or desktops); the frequency with which YOU used CHROME on each device; which browser modes YOU used in CHROME on each device; whether you logged into a Google account when you used CHROME on each device; which Google account(s) YOU logged into when YOU used CHROME on each device; which website(s) YOU visited while using CHROME on each device; whether you ever

1 reviewed or deleted data on MY GOOGLE ACTIVITY; and how often YOU enabled CHROME
2 INCOGNITO MODE while logged out of your Google account.

3 **RESPONSE TO INTERROGATORY NO. 2:**

4 Plaintiff Brown objects to Interrogatory No. 2 as overly broad, vague, and not proportional
5 to the needs of the litigation, considering Google requests each and every instance when Plaintiff
6 Brown used Chrome, the Google accounts logged into for each instance of using Chrome, each
7 website visited with Chrome, and other disproportional details, rendering this Interrogatory No. 2
8 not possible to fully and accurately answer. Plaintiff Brown also objects that this interrogatory is
9 compound, asking in part about his use of Chrome but then separately including a request regarding
10 the separate topic of whether he “reviewed or deleted data on MY GOOGLE ACTIVITY.” This
11 interrogatory therefore counts as two separate interrogatories.

12 Notwithstanding and subject to these objections, Plaintiff Brown responds that he has used
13 Chrome on his laptop computer since at least [REDACTED] as the primary web browser. Since [REDACTED],
14 Plaintiff Brown used Chrome on his laptop, and in the last approximate two years began using
15 Chrome’s private browsing mode more often on his laptop, at least a few times per month, and at
16 least a few times per week on his Android phone. Plaintiff Brown uses private browsing mode on
17 both his laptop and phone to browse [REDACTED]

18 [REDACTED]
19 [REDACTED]. To the best of Plaintiff Brown’s knowledge, he has never logged into any Google accounts
20 in Chrome when using Chrome’s private browsing mode, but may have logged into his Google
21 accounts, [REDACTED], and [REDACTED] when
22 using Chrome in its non-private browsing mode. To the best of Plaintiff Brown’s knowledge,
23 Plaintiff Brown has not reviewed or deleted his My Google Activity.
24

25
26 **INTERROGATORY NO. 3:**
27
28

1 Describe with particularity how YOU have been harmed or damaged by DEFENDANT's
2 conduct alleged in YOUR COMPLAINT.

3 **RESPONSE TO INTERROGATORY NO. 3:**

4 Plaintiff Brown objects to Interrogatory No. 3 as discovery has not closed and Plaintiff
5 Brown does not know the full extent of Defendant's misconduct in collecting, gathering,
6 analyzing, and monetizing Plaintiff Brown's private browsing activity, and Plaintiff Brown
7 reserves his right to amend this interrogatory as the case proceeds.

8 Notwithstanding and subject to these objections, Plaintiff Brown responds that he values
9 his privacy and takes careful precautions to protect his privacy. When Plaintiff Brown engaged in
10 the private browsing mode in Google's Chrome browser, Plaintiff Brown read Google's
11 representations that Plaintiff Brown's browsing activity would not be collected and that he could
12 browse the web privately. Based on Google's representations, Plaintiff Brown reasonably believed
13 that he could control the information that would be shared with Google. Plaintiff Brown considered
14 this browsing activity private and confidential, and did not intend to share it with Google. Plaintiff
15 Brown never consented to Google's interception of his private browsing communication, Google's
16 collection of any data from his private browsing, or Google's use of any data from his private
17 browsing. Plaintiff Brown chose the private browsing mode to avoid Google's collection of that
18 browsing activity and to browse the web without Google spying on and gathering that browsing
19 activity for its own monetary gain. Without Plaintiff Brown's knowledge, Google continued to
20 monitor and collect his browsing activity and used that browsing activity for its own monetary
21 gain. Plaintiff Brown is familiar with other web browsers, such as Brave, among others, which pay
22 users a fee for their browsing.

23 **INTERROGATORY NO. 4:**

24 Without limitation as to time period, describe with particularity all websites, applications,
25 or other online services with which YOU voluntarily shared any DATA AT ISSUE.

26 **RESPONSE TO INTERROGATORY NO. 4:**
27
28

1 Plaintiff Brown objects to Interrogatory No. 4 as overly broad, vague, and not proportional
2 to the needs of the litigation, considering Google requests each and every instance when Plaintiff
3 Brown may have shared “data” with a website, application, or other online service, regardless of
4 any time limitation, rendering this Interrogatory No. 4 not possible to fully and accurately answer.
5 In addition, to the extent this request seeks information regarding “data” shared when private
6 browsing mode was not enabled, it is irrelevant. On the basis of these objections, Plaintiff Brown
7 does not intend to respond to Interrogatory No. 4, other than to say that he did not knowingly or
8 voluntarily share any page views (*e.g.*, URL information) while private browsing mode was
9 enabled. Given his uncertainty regarding the meaning of this Interrogatory, Plaintiff Brown is
10 willing to meet and confer with Defendant regarding his objection.

11 **INTERROGATORY NO. 5:**

12 Describe with particularity each time YOU used private browsing mode, including
13 separately identifying for each time the following: the browser, the private browsing mode, the
14 date and time, the device, the websites visited, how long each private browsing session lasted and
15 YOUR location.

16 **RESPONSE TO INTERROGATORY NO. 5:**

17 Plaintiff Brown objects to Interrogatory No. 5 as overly broad, vague, and not proportional
18 to the needs of the litigation, insofar as Google may be requesting particular details of dates, times,
19 devices, websites visited, the duration of those visits, and Plaintiff Brown’s location while engaged
20 in these activities. Further, Plaintiff Brown chooses the private browsing mode because he does
21 not want this activity tracked, recorded, or otherwise memorialized and, therefore, requiring
22 Plaintiff Brown to recall the details sufficient to respond to Interrogatory No. 5 would be
23 unreasonable and not proportional to the needs of the litigation. Further, according to Google’s
24 Motion to Dismiss, Google, unlike Plaintiff Brown, collects most if not all of the information
25 requested. Accordingly, Google is in the best position to answer this Interrogatory since it is
26 already in possession of this information.
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1 Notwithstanding and subject to these objections, Plaintiff Brown responds that he used
2 private browsing mode with the specific purpose of that activity not being tracked, recorded, or
3 otherwise memorialized and, therefore, Plaintiff Brown cannot recall the particular details of each
4 and every time he engaged in private browsing mode. Plaintiff Brown used Chrome's private
5 browsing mode for approximately the last [REDACTED] years to browse [REDACTED]
6 [REDACTED]

7 [REDACTED] The vast majority of this private browsing
8 activity was done in Chrome, but Plaintiff Brown may have tried the private browsing mode with
9 Microsoft's web browser once or twice. The overwhelming majority of Plaintiff Brown's private
10 browsing activity was done in [REDACTED].

11 **INTERROGATORY NO. 6:**

12 Describe with particularity YOUR use of all non-CHROME private browsing modes,
13 including: what non-CHROME private browsing modes YOU used, the time periods in which
14 YOU used each of the non-CHROME private browsing modes YOU identified, and, if any, what
15 disclosures from publishers of the non-CHROME browsers you reviewed or relied on during the
16 time periods YOU identified.

17 **RESPONSE TO INTERROGATORY NO. 6:**

18 Plaintiff Brown objects to Interrogatory No. 6 as overly broad, vague, and not proportional
19 to the needs of the litigation, to the extent, like with Interrogatory No. 5, Google requests particular
20 details of dates, times, devices, websites visited, the duration of those visits, and Plaintiff Brown's
21 location while engaged in these activities. Further, Plaintiff Brown chooses the private browsing
22 mode because he does not want this activity tracked, recorded, or otherwise memorialized and,
23 therefore, requiring Plaintiff Brown to recall the details sufficient to respond to Interrogatory No.
24 6 would be unreasonable and not proportional to the needs of the litigation. Further, according to
25 Google's Motion to Dismiss, Google, unlike Plaintiff Brown, collects most if not all of the
26 information requested. Accordingly, Google is in the best position to answer this Interrogatory
27 since it is already in possession of this information. Finally, Plaintiff Brown objects to the term
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“publishers of non-Chrome browsers” because this term is meaningless. Plaintiff Brown does not understand the distinction Google appears to make between websites on a Chrome browser and websites on a non-Chrome browser.

Notwithstanding and subject to these objections, Plaintiff Brown recalls using Microsoft’s web browser’s private browsing mode once or twice. Aside from rejecting cookie permissions when possible, Plaintiff Brown recalls seeing a private browsing mode screen in Microsoft’s web browser that represents the browsing history will not be saved.

Dated: January 11, 2021

MORGAN & MORGAN

/s/ John A. Yanchunis

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PROOF OF SERVICE

I, Ryan J. McGee, declare:

I am a citizen of the United States and employed in the County of Hillsborough, Florida. I am over the age of 18 and not a party to the within action; my business address is 201 N. Franklin St., 7th Floor, Tampa, FL 33602.

On January 11, 2021, I served the following document described as:

Plaintiff's Objections and Responses to Defendant's First Interrogatories

By electronic mail transmission from rmcgee@forthepeople.com on January 11, 2021, by transmitting a PDF format copy of such document to each such person at the e-mail addresses listed below. The document was transmitted by electronic transmission and such transmission was reported as complete and without error:

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17 Tel: 415-875-6600
18 Fax: 415-875-6700
19 jonathantse@quinnemanuel.com

20 *Attorney for Defendant*

21 Executed on January 11, 2021, at Tampa, Florida.

22 /s/ Ryan J. McGee
23 Ryan J. McGee, Esq.

EXHIBIT 17

PLAINTIFF WILLIAM BYATT'S OBJECTIONS AND RESPONSES TO DEFENDANT'S FIRST SET OF INTERROGATORIES

**Redacted Version of
Document Sought to
be Sealed**

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

CHASOM BROWN, MARIA NGUYEN,
WILLIAM BYATT, JEREMY DAVIS, and
CHRISTOPHER CASTILLO, individually
and on behalf of all other similarly situated,

Plaintiffs,

v.

GOOGLE LLC,

Defendant.

Case No. 5:20-cv-03664-LHK-SVK

**PLAINTIFF WILLIAM BYATT'S OBJECTIONS AND RESPONSES
TO DEFENDANT'S FIRST SET OF INTERROGATORIES**

Pursuant to Federal Rules of Civil Procedure 26 and 33, Plaintiff William Byatt ("Byatt") hereby objects and responds to Defendant's, Google LLC ("Google"), First Set of Interrogatories (Nos. 1–6). These objections and responses are made solely for the purpose of and in relation to this action. In addition, the objections and responses set forth in this document are based on Plaintiff Byatt's knowledge, investigations, and analysis to date. As discovery proceeds, Plaintiff Byatt may become aware of additional facts or evidence and his analysis of the case may change. Plaintiff Byatt reserves all rights to supplement and amend his objections and responses accordingly.

INTERROGATORY NO. 1:

Describe with particularity each time YOU reviewed the GOOGLE TERMS OF SERVICE, GOOGLE PRIVACY POLICY, MY GOOGLE ACTIVITY, CHROME INCOGNITO NOTICE, CHROME TERMS OF SERVICE, and/or CHROME PRIVACY NOTICE prior to the filing of the COMPLAINT and, if YOU reviewed such documents, on what date(s) and which version(s) YOU reviewed, and whether YOU reviewed the entire document(s) or only portion(s) of the document(s) (if only portion(s), describe with particularity which portion(s) you reviewed).

RESPONSE TO INTERROGATORY NO. 1:

Plaintiff Byatt objects to Interrogatory No. 1 to the extent it purports to suggest that review of and consent to Google's Privacy Policy is a necessary predicate for any claim in this litigation and not proportional to the needs of this litigation. Plaintiff Byatt's allegations relate to Google's conduct of secretly and unlawfully intercepting, collecting, analyzing, and monetizing Plaintiff Byatt's (and class members') browsing activity conducted in private browsing mode, despite Google's representations that Plaintiff Byatt's (and class members') browsing information would not be saved.

Notwithstanding and subject to these objections, Plaintiff Byatt responds that he reviewed the Chrome Incognito Notice (*i.e.*, the Incognito splash screen) and Google's representations contained therein each time he began a private browsing mode session in Chrome. Plaintiff Byatt further responds that, at or around the time he opened his Google Account and at times thereafter, he reviewed Google representations that he was in "control" of what information Google collects and could exercise such control by enabling private browsing mode, such as the representations outlined in paragraphs 2 and 42 of the First Amended Complaint. He understands this, along with the Chrome Incognito Notice (*i.e.*, the Incognito splash screen that he reviewed each time he began a private browsing mode session in Chrome), to be the Google Privacy Policy. He does not recall the exact dates he reviewed these disclosures. He likewise does not recall whether he reviewed the other disclosures included in this request, in part because, as described, he is not certain which specific disclosures they refer to.

INTERROGATORY NO. 2:

Describe with particularity YOUR use of CHROME, including: the date YOU first began using CHROME on each device (*e.g.*, mobile devices, tablets, laptops, and/or desktops); the frequency with which YOU used CHROME on each device; which browser modes YOU used in CHROME on each device; whether you logged into a Google account when you used CHROME on each device; which Google account(s) YOU logged into when YOU used CHROME on each device; which website(s) YOU visited while using CHROME on each device; whether you ever

1 reviewed or deleted data on MY GOOGLE ACTIVITY; and how often YOU enabled CHROME
2 INCOGNITO MODE while logged out of your Google account.

3 **RESPONSE TO INTERROGATORY NO. 2:**

4 Plaintiff Byatt objects to Interrogatory No. 2 as overly broad, vague, and not proportional
5 to the needs of the litigation, considering Google requests each and every instance when Plaintiff
6 Byatt used Chrome, the Google accounts logged into for each instance of using Chrome, each
7 website visited with Chrome, and other disproportional details, rendering this Interrogatory No. 2
8 not possible to fully and accurately answer. Plaintiff Byatt also objects that this interrogatory is
9 compound, asking in part about his use of Chrome but then separately including a request regarding
10 the separate topic of whether he “reviewed or deleted data on MY GOOGLE ACTIVITY.” This
11 interrogatory therefore counts as two separate interrogatories.

12 Notwithstanding and subject to these objections, Plaintiff Byatt responds that he has used
13 Chrome since it was released. Since [REDACTED], Plaintiff Byatt has almost exclusively used Chrome
14 on his laptop computers, as well as on his Android phone. Since [REDACTED], Plaintiff Byatt
15 estimates that he uses the Chrome private browsing mode approximately [REDACTED].
16 Plaintiff Byatt uses private browsing mode on both his laptop and phone. Plaintiff Byatt uses
17 private browsing mode on both his laptop and phone to browse [REDACTED]
18 [REDACTED]. To the best of Plaintiff Byatt’s knowledge, he has never logged into any Google accounts
19 in Chrome when using Chrome’s private browsing mode, but may have been logged into his
20 Google accounts, [REDACTED]
21 [REDACTED] and [REDACTED] when using
22 Chrome in its non-private browsing mode. Plaintiff Byatt has reviewed his My Google Activity
23 and, prior to this litigation, may have removed an entry from the My Google Activity, but cannot
24 recall what it was or when he did.

25 **INTERROGATORY NO. 3:**

26 Describe with particularity how YOU have been harmed or damaged by DEFENDANT’s
27 conduct alleged in YOUR COMPLAINT.
28

RESPONSE TO INTERROGATORY NO. 3:

Plaintiff Byatt objects to Interrogatory No. 3 as discovery has not closed and Plaintiff Byatt does not know the full extent of Defendant's misconduct in collecting, gathering, analyzing, and monetizing Plaintiff Byatt's private browsing activity, and Plaintiff Byatt reserves his right to amend this interrogatory as the case proceeds.

Notwithstanding and subject to these objections, Plaintiff Byatt responds that his privacy is very important to him and Plaintiff Byatt takes careful precautions to protect his privacy. When Plaintiff Byatt engaged in the private browsing mode in Google's Chrome browser, Plaintiff Byatt read Google's representations that Plaintiff Byatt's browsing activity would not be collected and that he could browse the web privately. Based on Google's representations, Plaintiff Byatt reasonably believed that he could control the information that would be shared with Google. Plaintiff Byatt considered this browsing activity private and confidential, and did intend to share it with Google. Plaintiff Byatt never consented to Google's interception of his private browsing communications, Google's collection of any data from his private browsing, or Google's use of any data from his private browsing. Plaintiff Byatt chose the private browsing mode to avoid Google's collection of that private browsing activity and to browse the web without Google spying on and gathering that browsing activity for its own monetary gain. Without Plaintiff Byatt's knowledge, Google continued to monitor and collect his browsing activity and used that browsing activity for its own monetary gain. Plaintiff Byatt is familiar with other web browsers, such as Brave, among others, which pay users a fee for their browsing.

INTERROGATORY NO. 4:

Without limitation as to time period, describe with particularity all websites, applications, or other online services with which YOU voluntarily shared any DATA AT ISSUE.

RESPONSE TO INTERROGATORY NO. 4:

Plaintiff Byatt objects to Interrogatory No. 4 as overly broad, vague, and not proportional to the needs of the litigation, considering Google requests each and every instance when Plaintiff Byatt may have shared "data" with a website, application, or other online service, regardless of

1 any time limitation, rendering this Interrogatory No. 4 not possible to fully and accurately answer.
2 In addition, to the extent this request seeks information regarding “data” shared when private
3 browsing mode was not enabled, it is irrelevant. On the basis of these objections, Plaintiff Byatt
4 does not intend to respond to Interrogatory No. 4, other than to say that he did not knowingly or
5 voluntarily share any page views (*e.g.*, URL information) while private browsing mode was
6 enabled. Given his uncertainty regarding the meaning of this Interrogatory, Plaintiff Byatt is
7 willing to meet and confer with Defendant regarding his objection.

8 **INTERROGATORY NO. 5:**

9 Describe with particularity each time YOU used private browsing mode, including
10 separately identifying for each time the following: the browser, the private browsing mode, the
11 date and time, the device, the websites visited, how long each private browsing session lasted and
12 YOUR location.

13 **RESPONSE TO INTERROGATORY NO. 5:**

14 Plaintiff Byatt objects to Interrogatory No. 5 as overly broad, vague, and not proportional
15 to the needs of the litigation, insofar as Google may be requesting particular details of dates, times,
16 devices, websites visited, the duration of those visits, and Plaintiff Byatt’s location while engaged
17 in these activities. Further, Plaintiff Byatt chooses the private browsing mode because he does not
18 want this activity tracked, recorded, or otherwise memorialized and, therefore, requiring Plaintiff
19 Byatt to recall the details sufficient to respond to Interrogatory No. 5 would be unreasonable and
20 not proportional to the needs of the litigation. Further, according to Google’s Motion to Dismiss,
21 Google, unlike Plaintiff Byatt, collects most if not all of the information requested. Accordingly,
22 Google is in the best position to answer this Interrogatory since it is already in possession of this
23 information.

24 Notwithstanding and subject to these objections, Plaintiff Byatt responds that he used
25 private browsing mode with the specific purpose of that activity not being tracked, recorded, or
26 otherwise memorialized and, therefore, Plaintiff Byatt cannot recall the particular details of each
27 and every time he engaged in private browsing mode. Plaintiff Byatt used Chrome’s private
28

1 browsing mode, and recalls using the Chrome private browsing mode to browse [REDACTED]

2 [REDACTED] The overwhelming majority of this private browsing activity was done in
3 Chrome, but Plaintiff Byatt may have browsed privately in Firefox, but cannot recall any specific
4 details of that activity. The majority of Plaintiff Byatt's private browsing activity was done in
5 [REDACTED]

6 **INTERROGATORY NO. 6:**

7 Describe with particularity YOUR use of all non-CHROME private browsing modes,
8 including: what non-CHROME private browsing modes YOU used, the time periods in which
9 YOU used each of the non-CHROME private browsing modes YOU identified, and, if any, what
10 disclosures from publishers of the non-CHROME browsers you reviewed or relied on during the
11 time periods YOU identified.

12 **RESPONSE TO INTERROGATORY NO. 6:**

13 Plaintiff Byatt objects to Interrogatory No. 6 as overly broad, vague, and not proportional
14 to the needs of the litigation, to the extent, like with Interrogatory No. 5, Google requests particular
15 details of dates, times, devices, websites visited, the duration of those visits, and Plaintiff Byatt's
16 location while engaged in these activities. Further, Plaintiff Byatt chooses the private browsing
17 mode because he does not want this activity tracked, recorded, or otherwise memorialized and,
18 therefore, requiring Plaintiff Byatt to recall the details sufficient to respond to Interrogatory No. 6
19 would be unreasonable and not proportional to the needs of the litigation. Further, according to
20 Google's Motion to Dismiss, Google, unlike Plaintiff Byatt, collects most if not all of the
21 information requested. Accordingly, Google is in the best position to answer this Interrogatory
22 since it is already in possession of this information. Finally, Plaintiff Byatt objects to the term
23 "publishers of non-Chrome browsers" because this term is meaningless. Plaintiff Byatt does not
24 understand the distinction Google appears to be making between websites on a Chrome browser
25 and websites on a non-Chrome browser.
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Notwithstanding and subject to these objections, Plaintiff Byatt recalls that some of his private browsing activity was done in Firefox. Plaintiff Byatt recalls seeing a private browsing mode screen in Firefox that represents the browsing history will not be saved.

Dated: January 11, 2021

MORGAN & MORGAN

/s/ John A. Yanchunis

John A. Yanchunis (*pro hac vice*)

Ryan J. McGee (*pro hac vice*)

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PROOF OF SERVICE

I, Ryan J. McGee, declare:

I am a citizen of the United States and employed in the County of Hillsborough, Florida. I am over the age of 18 and not a party to the within action; my business address is 201 N. Franklin St., 7th Floor, Tampa, FL 33602.

On January 11, 2021, I served the following document described as:

Plaintiff's Objections and Responses to Defendant's First Interrogatories

By electronic mail transmission from rmcgee@forthepeople.com on January 11, 2021, by transmitting a PDF format copy of such document to each such person at the e-mail addresses listed below. The document was transmitted by electronic transmission and such transmission was reported as complete and without error:

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20 *Attorney for Defendant*

21 Executed on January 11, 2021, at Tampa, Florida.

22 /s/ Ryan J. McGee
23 Ryan J. McGee, Esq.

EXHIBIT 18

PLAINTIFF CHRISTOPHER CASTILLO'S OBJECTIONS AND RESPONSES TO DEFENDANT'S FIRST SET OF INTERROGATORIES

**Redacted Version of
Document Sought to
be Sealed**

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

CHASOM BROWN, MARIA NGUYEN,
WILLIAM BYATT, JEREMY DAVIS, and
CHRISTOPHER CASTILLO, individually
and on behalf of all other similarly situated,

Plaintiffs,

v.

GOOGLE LLC,

Defendant.

Case No. 5:20-cv-03664-LHK-SVK

**PLAINTIFF CHRISTOPHER CASTILLO'S OBJECTIONS AND RESPONSES
TO DEFENDANT'S FIRST SET OF INTERROGATORIES**

Pursuant to Federal Rules of Civil Procedure 26 and 33, Plaintiff Christopher Castillo ("Castillo") hereby objects and responds to Defendant's, Google LLC ("Google"), First Set of Interrogatories (Nos. 1–6). These objections and responses are made solely for the purpose of and in relation to this action. In addition, the objections and responses set forth in this document are based on Plaintiff Castillo's knowledge, investigations, and analysis to date. As discovery proceeds, Plaintiff Castillo may become aware of additional facts or evidence and his analysis of the case may change. Plaintiff Castillo reserves all rights to supplement and amend his objections and responses accordingly.

INTERROGATORY NO. 1:

Describe with particularity each time YOU reviewed the GOOGLE TERMS OF SERVICE, GOOGLE PRIVACY POLICY, MY GOOGLE ACTIVITY, CHROME INCOGNITO NOTICE, CHROME TERMS OF SERVICE, and/or CHROME PRIVACY NOTICE prior to the filing of the COMPLAINT and, if YOU reviewed such documents, on what date(s) and which version(s) YOU reviewed, and whether YOU reviewed the entire document(s) or only portion(s) of the document(s) (if only portion(s), describe with particularity which portion(s) you reviewed).

RESPONSE TO INTERROGATORY NO. 1:

Plaintiff Castillo objects to Interrogatory No. 1 to the extent it purports to suggest that review of and consent to Google's Privacy Policy is a necessary predicate for any claim in this litigation and not proportional to the needs of this litigation. Plaintiff Castillo's allegations relate to Google's conduct of secretly and unlawfully intercepting, collecting, analyzing, and monetizing Plaintiff Castillo's (and class members') browsing activity conducted in private browsing mode, despite Google's representations that Plaintiff Castillo's (and class members') browsing information would not be saved.

Notwithstanding and subject to these objections, Plaintiff Castillo responds that he reviewed the Chrome Incognito Notice (i.e., the Incognito splash screen) and Google's representations contained therein each time he began a private browsing mode session in Chrome. Plaintiff Castillo further responds that, at or around the time he opened his Google Account and at times thereafter, he reviewed Google representations that he was in "control" of what information Google collects and could exercise such control by enabling private browsing mode, such as the representations outlined in paragraphs 2 and 42 of the First Amended Complaint. He understands this, along with the Chrome Incognito Notice (i.e., the Incognito splash screen that he reviewed each time he began a private browsing mode session in Chrome), to be the Google Privacy Policy. He does not recall the exact dates he reviewed these disclosures. He likewise does not recall whether he reviewed the other disclosures included in this request, in part because, as described, he is not certain which specific disclosures they refer to.

INTERROGATORY NO. 2:

Describe with particularity YOUR use of CHROME, including: the date YOU first began using CHROME on each device (e.g., mobile devices, tablets, laptops, and/or desktops); the frequency with which YOU used CHROME on each device; which browser modes YOU used in CHROME on each device; whether you logged into a Google account when you used CHROME on each device; which Google account(s) YOU logged into when YOU used CHROME on each device; which website(s) YOU visited while using CHROME on each device; whether you ever

1 reviewed or deleted data on MY GOOGLE ACTIVITY; and how often YOU enabled CHROME
2 INCOGNITO MODE while logged out of your Google account.

3 **RESPONSE TO INTERROGATORY NO. 2:**

4 Plaintiff Castillo objects to Interrogatory No. 2 as overly broad, vague, and not proportional
5 to the needs of the litigation, considering Google requests each and every instance when Plaintiff
6 Castillo used Chrome, the Google accounts logged into for each instance of using Chrome, each
7 website visited with Chrome, and other disproportional details, rendering this Interrogatory No. 2
8 not possible to fully and accurately answer. Plaintiff Castillo also objects that this interrogatory is
9 compound, asking in part about his use of Chrome but then separately including a request regarding
10 the separate topic of whether he “reviewed or deleted data on MY GOOGLE ACTIVITY.” This
11 interrogatory therefore counts as two separate interrogatories.

12 Notwithstanding and subject to these objections, Plaintiff Castillo responds that he has used
13 Chrome on his desktop computers since at least [REDACTED] as the primary web browser. Since [REDACTED]
14 [REDACTED] Plaintiff Castillo has used Chrome for most of his browsing activity on his devices, including
15 his desktop and Android phone. Since [REDACTED], Plaintiff Castillo has used Chrome in both the
16 non-private browsing mode and private browsing modes for his browsing activity on his devices,
17 including his desktop and Android phone. Since [REDACTED], Plaintiff Castillo estimates that he uses
18 the Chrome private browsing mode approximately [REDACTED] times per week. Plaintiff Castillo
19 uses private browsing mode on both his desktop and phone to browse [REDACTED]

20 [REDACTED] To the best of Plaintiff Castillo’s knowledge, he has
21 never logged into any Google accounts in Chrome when using Chrome’s private browsing mode,
22 but may have been logged into his Google account, [REDACTED], when using
23 Chrome in its non-private browsing mode. To the best of Plaintiff Castillo’s knowledge, Plaintiff
24 Castillo has not reviewed or deleted his My Google Activity.

25 **INTERROGATORY NO. 3:**

26 Describe with particularity how YOU have been harmed or damaged by DEFENDANT’s
27 conduct alleged in YOUR COMPLAINT.
28

RESPONSE TO INTERROGATORY NO. 3:

Plaintiff Castillo objects to Interrogatory No. 3 as discovery has not closed and Plaintiff Castillo does not know the full extent of Defendant's misconduct in collecting, gathering, analyzing, and monetizing Plaintiff Castillo's private browsing activity, and Plaintiff Castillo reserves his right to amend this interrogatory as the case proceeds.

Notwithstanding and subject to these objections, Plaintiff Castillo responds that his privacy is a right and, as a [REDACTED], Plaintiff Castillo values and takes meticulous precautions to protect his privacy. When Plaintiff Castillo engaged in the private browsing mode in Google's Chrome browser, Plaintiff Castillo read Google's representations that Plaintiff Castillo's browsing activity would not be collected and that he could browse the web privately. Based on Google's representations, Plaintiff Castillo reasonably believed that he could control the information that would be shared with Google. Plaintiff Castillo considered this browsing activity private and confidential, and did intend to share it with Google. Plaintiff Castillo never consented to Google's interception of his private browsing communications, Google's collection of any data from his private browsing, or Google's use of any data from his private browsing. Plaintiff Castillo chose the private browsing mode to avoid Google's collection of that private browsing activity and to browse the web without Google spying on and gathering that browsing activity for its own monetary gain. Without Plaintiff Castillo's knowledge, Google continued to monitor and collect his browsing activity and used that browsing activity for its own monetary gain. Plaintiff Castillo is familiar with other web browsers, such as Brave, among others, which pay users a fee for their browsing.

INTERROGATORY NO. 4:

Without limitation as to time period, describe with particularity all websites, applications, or other online services with which YOU voluntarily shared any DATA AT ISSUE.

RESPONSE TO INTERROGATORY NO. 4:

Plaintiff Castillo objects to Interrogatory No. 4 as overly broad, vague, and not proportional to the needs of the litigation, considering Google requests each and every instance when Plaintiff

1 Castillo may have shared “data” with a website, application, or other online service, regardless of
2 any time limitation, rendering this Interrogatory No. 4 not possible to fully and accurately answer.
3 In addition, to the extent this request seeks information regarding “data” shared when private
4 browsing mode was not enabled, it is irrelevant. On the basis of these objections, Plaintiff Castillo
5 does not intend to respond to Interrogatory No. 4, other than to say that he did not knowingly or
6 voluntarily share any page views (*i.e.*, URL information) while private browsing mode was
7 enabled. Given his uncertainty regarding the meaning of this Interrogatory, Plaintiff Castillo is
8 willing to meet and confer with Defendant regarding his objection.

9 **INTERROGATORY NO. 5:**

10 Describe with particularity each time YOU used private browsing mode, including
11 separately identifying for each time the following: the browser, the private browsing mode, the
12 date and time, the device, the websites visited, how long each private browsing session lasted and
13 YOUR location.

14 **RESPONSE TO INTERROGATORY NO. 5:**

15 Plaintiff Castillo objects to Interrogatory No. 5 as overly broad, vague, and not proportional
16 to the needs of the litigation, insofar as Google may be requesting particular details of dates, times,
17 devices, websites visited, the duration of those visits, and Plaintiff Castillo’s location while
18 engaged in these activities. Further, Plaintiff Castillo chooses the private browsing mode because
19 he does not want this activity tracked, recorded, or otherwise memorialized and, therefore,
20 requiring Plaintiff Castillo to recall the details sufficient to respond to Interrogatory No. 5 would
21 be unreasonable and not proportional to the needs of the litigation. Further, according to Google’s
22 Motion to Dismiss, Google, unlike Plaintiff Castillo, collects most if not all of the information
23 requested. Accordingly, Google is in the best position to answer this Interrogatory since it is
24 already in possession of this information.

25 Notwithstanding and subject to these objections, Plaintiff Castillo responds that he used
26 private browsing mode with the specific purpose of that activity not being tracked, recorded, or
27 otherwise memorialized and, therefore, Plaintiff Castillo cannot recall the particular details of each
28

1 and every time he engaged in private browsing mode. Plaintiff Castillo used Chrome's private
2 browsing mode, and recalls using the Chrome private browsing mode in approximately [REDACTED] and
3 [REDACTED] to browse [REDACTED] on his desktop computer and
4 phone. Also, more recently Plaintiff Castillo used Chrome's private browsing mode to [REDACTED]
5 [REDACTED]
6 [REDACTED]. Otherwise, Plaintiff Castillo occasionally uses Chrome's private
7 browsing mode to [REDACTED]. The majority of Plaintiff
8 Castillo's private browsing activity was done in [REDACTED].

9 **INTERROGATORY NO. 6:**

10 Describe with particularity YOUR use of all non-CHROME private browsing modes,
11 including: what non-CHROME private browsing modes YOU used, the time periods in which
12 YOU used each of the non-CHROME private browsing modes YOU identified, and, if any, what
13 disclosures from publishers of the non-CHROME browsers you reviewed or relied on during the
14 time periods YOU identified.

15 **RESPONSE TO INTERROGATORY NO. 6:**

16 Plaintiff Castillo objects to Interrogatory No. 6 as overly broad, vague, and not proportional
17 to the needs of the litigation, to the extent, like with Interrogatory No. 5, Google requests particular
18 details of dates, times, devices, websites visited, the duration of those visits, and Plaintiff Castillo's
19 location while engaged in these activities. Further, Plaintiff Castillo chooses the private browsing
20 mode because he does not want this activity tracked, recorded, or otherwise memorialized and,
21 therefore, requiring Plaintiff Castillo to recall the details sufficient to respond to Interrogatory No.
22 6 would be unreasonable and not proportional to the needs of the litigation. Further, according to
23 Google's Motion to Dismiss, Google, unlike Plaintiff Castillo, collects most if not all of the
24 information requested. Accordingly, Google is in the best position to answer this Interrogatory
25 since it is already in possession of this information. Finally, Plaintiff Castillo objects to the term
26 "publishers of non-Chrome browsers" because this term is meaningless. Plaintiff Castillo does not
27
28

1 understand the distinction Google appears to be making between websites on a Chrome browser
2 and websites on a non-Chrome browser.

3 Notwithstanding and subject to these objections, Plaintiff Castillo cannot recall any
4 particular details of his use of a non-Chrome private browsing mode.

5 Dated: January 11, 2021

MORGAN & MORGAN

6 /s/ John A. Yanchunis

7 John A. Yanchunis (*pro hac vice*)
8 Ryan J. McGee (*pro hac vice*)
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Attorneys for Plaintiffs

PROOF OF SERVICE

I, Ryan J. McGee, declare:

I am a citizen of the United States and employed in the County of Hillsborough, Florida. I am over the age of 18 and not a party to the within action; my business address is 201 N. Franklin St., 7th Floor, Tampa, FL 33602.

On January 11, 2021, I served the following document described as:

Plaintiff's Objections and Responses to Defendant's First Interrogatories

By electronic mail transmission from rmcgee@forthepeople.com on January 11, 2021, by transmitting a PDF format copy of such document to each such person at the e-mail addresses listed below. The document was transmitted by electronic transmission and such transmission was reported as complete and without error:

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19 jonathantse@quinnemanuel.com

20 *Attorney for Defendant*

21 Executed on January 11, 2021, at Tampa, Florida.

22 /s/ Ryan J. McGee
23 Ryan J. McGee, Esq.

EXHIBIT 19

PLAINTIFF JEREMY DAVIS' OBJECTIONS AND RESPONSES TO DEFENDANT'S FIRST SET OF INTERROGATORIES

**Redacted Version of
Document Sought to
be Sealed**

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

CHASOM BROWN, MARIA NGUYEN,
WILLIAM BYATT, JEREMY DAVIS, and
CHRISTOPHER CASTILLO, individually
and on behalf of all other similarly situated,

Plaintiffs,

v.

GOOGLE LLC,

Defendant.

Case No. 5:20-cv-03664-LHK-SVK

**PLAINTIFF JEREMY DAVIS' OBJECTIONS AND RESPONSES
TO DEFENDANT'S FIRST SET OF INTERROGATORIES**

Pursuant to Federal Rules of Civil Procedure 26 and 33, Plaintiff Jeremy Davis ("Davis") hereby objects and responds to Defendant's, Google LLC ("Google"), First Set of Interrogatories (Nos. 1–6). These objections and responses are made solely for the purpose of and in relation to this action. In addition, the objections and responses set forth in this document are based on Plaintiff Davis' knowledge, investigations, and analysis to date. As discovery proceeds, Plaintiff Davis may become aware of additional facts or evidence and his analysis of the case may change. Plaintiff Davis reserves all rights to supplement and amend his objections and responses accordingly.

INTERROGATORY NO. 1:

Describe with particularity each time YOU reviewed the GOOGLE TERMS OF SERVICE, GOOGLE PRIVACY POLICY, MY GOOGLE ACTIVITY, CHROME INCOGNITO NOTICE, CHROME TERMS OF SERVICE, and/or CHROME PRIVACY NOTICE prior to the filing of the COMPLAINT and, if YOU reviewed such documents, on what date(s) and which version(s) YOU reviewed, and whether YOU reviewed the entire document(s) or only portion(s) of the document(s) (if only portion(s), describe with particularity which portion(s) you reviewed).

RESPONSE TO INTERROGATORY NO. 1:

Plaintiff Davis objects to Interrogatory No. 1 to the extent it purports to suggest that review of and consent to Google's Privacy Policy is a necessary predicate for any claim in this litigation and not proportional to the needs of this litigation. Plaintiff Davis' allegations relate to Google's conduct of secretly and unlawfully intercepting, collecting, analyzing, and monetizing Plaintiff Davis' (and class members') browsing activity conducted in private browsing mode, despite Google's representations that Plaintiff Davis' (and class members') browsing information would not be saved.

Notwithstanding and subject to these objections, Plaintiff Davis responds that he reviewed the Chrome Incognito Notice (i.e., the Incognito splash screen) and Google's representations contained therein each time he began a private browsing mode session in Chrome. Plaintiff Davis further responds that, at or around the time he opened his Google Account and at times thereafter, he reviewed Google representations that he was in "control" of what information Google collects and could exercise such control by enabling private browsing mode, such as the representations outlined in paragraphs 2 and 42 of the First Amended Complaint. He understands this, along with the Chrome Incognito Notice (i.e., the Incognito splash screen that he reviewed each time he began a private browsing mode session in Chrome), to be the Google Privacy Policy. He does not recall the exact dates he reviewed these disclosures. He likewise does not recall whether he reviewed the other disclosures included in this request, in part because, as described, he is not certain which specific disclosures they refer to.

INTERROGATORY NO. 2:

Describe with particularity YOUR use of CHROME, including: the date YOU first began using CHROME on each device (e.g., mobile devices, tablets, laptops, and/or desktops); the frequency with which YOU used CHROME on each device; which browser modes YOU used in CHROME on each device; whether you logged into a Google account when you used CHROME on each device; which Google account(s) YOU logged into when YOU used CHROME on each device; which website(s) YOU visited while using CHROME on each device; whether you ever

1 reviewed or deleted data on MY GOOGLE ACTIVITY; and how often YOU enabled CHROME
2 INCOGNITO MODE while logged out of your Google account.

3 **RESPONSE TO INTERROGATORY NO. 2:**

4 Plaintiff Davis objects to Interrogatory No. 2 as overly broad, vague, and not proportional
5 to the needs of the litigation, considering Google requests each and every instance when Plaintiff
6 Davis used Chrome, the Google accounts logged into for each instance of using Chrome, each
7 website visited with Chrome, and other disproportional details, rendering this Interrogatory No. 2
8 not possible to fully and accurately answer. Plaintiff Davis also objects that this interrogatory is
9 compound, asking in part about his use of Chrome but then separately including a request regarding
10 the separate topic of whether he “reviewed or deleted data on MY GOOGLE ACTIVITY.” This
11 interrogatory therefore counts as two separate interrogatories.

12 Notwithstanding and subject to these objections, Plaintiff Davis responds that he has used
13 Chrome on desktop and laptop computers since at least [REDACTED]. Since [REDACTED], Plaintiff Davis has
14 exclusively used Chrome on desktop and laptop computers, as well as tablets and his phone, and
15 the overwhelming majority of his browsing activity is done in private browsing mode in Chrome,
16 which is at least [REDACTED] of visits to websites during this time. In fact, Plaintiff Davis
17 utilizes private browsing mode by default on all of his devices and web browsers (Chrome on his
18 laptops and tablets, Chrome and Safari on his iPhone), and to the best of Plaintiff Davis’
19 knowledge, the only time browsing activity may be done outside of private browsing mode is when
20 Plaintiff Davis clicks a hyperlink from an email and that hyperlink launches his browser in non-
21 private browsing mode on his iPhone. Otherwise, all of Plaintiff Davis’ browsing activity is
22 performed in private browsing mode. To the best of Plaintiff Davis’ knowledge, he has never
23 logged into any Google accounts when using Chrome’s private browsing mode. To the best of
24 Plaintiff Davis’ knowledge, Plaintiff Davis has not reviewed or deleted his My Google Activity.

25 **INTERROGATORY NO. 3:**

26 Describe with particularity how YOU have been harmed or damaged by DEFENDANT’s
27 conduct alleged in YOUR COMPLAINT.
28

RESPONSE TO INTERROGATORY NO. 3:

Plaintiff Davis objects to Interrogatory No. 3 as discovery has not closed and Plaintiff Davis does not know the full extent of Defendant's misconduct in collecting, gathering, analyzing, and monetizing Plaintiff Davis' private browsing activity, and Plaintiff Davis reserves his right to amend this interrogatory as the case proceeds.

Notwithstanding and subject to these objections, Plaintiff Davis responds that his privacy is a human right and Plaintiff Davis takes careful precautions to protect his privacy. When Plaintiff Davis engaged in the private browsing mode in Google's Chrome browser (essentially every time he browsed the internet), Plaintiff Davis read Google's representations that Plaintiff Davis' browsing activity would not be collected and that he could browse the web privately. Based on Google's representations, Plaintiff Davis reasonably believed that he could control the information that would be shared with Google. Plaintiff Davis considered this browsing activity private and confidential, and did not intend to share it with Google. Plaintiff Davis never consented to Google's interception of his private browsing communications, Google's collection of any data from his private browsing, or Google's use of any data from his private browsing. Plaintiff Davis chose the private browsing mode to avoid Google's collection of that browsing activity and to browse the web without Google spying on and gathering that browsing activity for its own monetary gain. Without Plaintiff Davis' knowledge, Google continued to monitor and collect his browsing activity and used that browsing activity for its own monetary gain. Plaintiff Davis is familiar with other web browsers, such as Brave, among others, which pay users a fee for their browsing.

INTERROGATORY NO. 4:

Without limitation as to time period, describe with particularity all websites, applications, or other online services with which YOU voluntarily shared any DATA AT ISSUE.

RESPONSE TO INTERROGATORY NO. 4:

Plaintiff Davis objects to Interrogatory No. 4 as overly broad, vague, and not proportional to the needs of the litigation, considering Google requests each and every instance when Plaintiff

1 Davis may have shared “data” with a website, application, or other online service, regardless of
2 any time limitation, rendering this Interrogatory No. 4 not possible to fully and accurately answer.
3 In addition, to the extent this request seeks information regarding “data” shared when private
4 browsing mode was not enabled, it is irrelevant. On the basis of these objections, Plaintiff Davis
5 does not intend to respond to Interrogatory No. 4, other than to say that he did not knowingly or
6 voluntarily share any page views (*e.g.*, URL information) while private browsing mode was
7 enabled. Given his uncertainty regarding the meaning of this Interrogatory, Plaintiff Davis is
8 willing to meet and confer with Defendant regarding his objection.
9

10 **INTERROGATORY NO. 5:**

11 Describe with particularity each time YOU used private browsing mode, including
12 separately identifying for each time the following: the browser, the private browsing mode, the
13 date and time, the device, the websites visited, how long each private browsing session lasted and
14 YOUR location.

15 **RESPONSE TO INTERROGATORY NO. 5:**

16 Plaintiff Davis objects to Interrogatory No. 5 as overly broad, vague, and not proportional
17 to the needs of the litigation, insofar as Google may be requesting particular details of dates, times,
18 devices, websites visited, the duration of those visits, and Plaintiff Davis’ location while engaged
19 in these activities. Further, Plaintiff Davis chooses the private browsing mode because he does not
20 want this activity tracked, recorded, or otherwise memorialized and, therefore, requiring Plaintiff
21 Davis to recall the details sufficient to respond to Interrogatory No. 5 would be unreasonable and
22 not proportional to the needs of the litigation. Further, according to Google’s Motion to Dismiss,
23 Google, unlike Plaintiff Davis, collects most if not all of the information requested. Accordingly,
24 Google is in the best position to answer this Interrogatory since it is already in possession of this
25 information.

26 Notwithstanding and subject to these objections, Plaintiff Davis responds that the
27 overwhelming majority of his browsing activity is done by default in private browsing mode in
28 Chrome. In fact, Plaintiff Davis utilizes private browsing mode by default on all of his devices and

1 web browsers (Chrome on his laptops and tablets, Chrome and Safari on his iPhone), and to the
2 best of Plaintiff Davis' knowledge, the only time browsing activity may be done outside of private
3 browsing mode is when Plaintiff Davis clicks a hyperlink from an email and that hyperlink
4 launches his browser in non-private browsing mode. Otherwise, all of Plaintiff Davis' browsing
5 activity is performed in private browsing mode. The majority of Plaintiff Davis' private browsing
6 activity was done in [REDACTED].

7 **INTERROGATORY NO. 6:**

8 Describe with particularity YOUR use of all non-CHROME private browsing modes,
9 including: what non-CHROME private browsing modes YOU used, the time periods in which
10 YOU used each of the non-CHROME private browsing modes YOU identified, and, if any, what
11 disclosures from publishers of the non-CHROME browsers you reviewed or relied on during the
12 time periods YOU identified.

13 **RESPONSE TO INTERROGATORY NO. 6:**

14 Plaintiff Davis objects to Interrogatory No. 6 as overly broad, vague, and not proportional
15 to the needs of the litigation, to the extent, like with Interrogatory No. 5, Google requests particular
16 details of dates, times, devices, websites visited, the duration of those visits, and Plaintiff Davis'
17 location while engaged in these activities. Further, Plaintiff Davis chooses the private browsing
18 mode because he does not want this activity tracked, recorded, or otherwise memorialized and,
19 therefore, requiring Plaintiff Davis to recall the details sufficient to respond to Interrogatory No. 6
20 would be unreasonable and not proportional to the needs of the litigation. Further, according to
21 Google's Motion to Dismiss, Google, unlike Plaintiff Davis, collects most if not all of the
22 information requested. Accordingly, Google is in the best position to answer this Interrogatory
23 since it is already in possession of this information. Finally, Plaintiff Davis objects to the term
24 "publishers of non-Chrome browsers" because this term is meaningless. Plaintiff Davis does not
25 understand the distinction Google appears to be making between websites on a Chrome browser
26 and websites on a non-Chrome browser.

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1 Notwithstanding and subject to these objections, Plaintiff Davis responds that the
2 overwhelming majority of his browsing activity is done in private browsing mode in Chrome, but
3 he has used Safari on his iPhone in "Private Browsing Mode." Plaintiff Davis recalls seeing a
4 private browsing mode screen in Safari's web browser that represents the browsing history will
5 not be saved.

6 Dated: January 11, 2021

MORGAN & MORGAN

/s/ John A. Yanchunis

John A. Yanchunis (*pro hac vice*)

Ryan J. McGee (*pro hac vice*)

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Attorneys for Plaintiffs

PROOF OF SERVICE

I, Ryan J. McGee, declare:

I am a citizen of the United States and employed in the County of Hillsborough, Florida. I am over the age of 18 and not a party to the within action; my business address is 201 N. Franklin St., 7th Floor, Tampa, FL 33602.

On January 11, 2021, I served the following document described as:

Plaintiff's Objections and Responses to Defendant's First Request for Interrogatories

By electronic mail transmission from rmcgee@forthepeople.com on January 11, 2021, by transmitting a PDF format copy of such document to each such person at the e-mail addresses listed below. The document was transmitted by electronic transmission and such transmission was reported as complete and without error:

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16 San Francisco, CA 94111
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19 jonathantse@quinnemanuel.com

20 *Attorney for Defendant*

21 Executed on January 11, 2021, at Tampa, Florida.

22 /s/ Ryan J. McGee
23 Ryan J. McGee, Esq.
24
25
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EXHIBIT 20

PLAINTIFF
CHASOM BROWN'S
VERIFIED
AMENDED
OBJECTIONS AND
RESPONSES TO
DEFENDANT'S
INTERROGATORIES
1, 4, AND 5

Redacted Version
of Document Sought
to be Sealed

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

CHASOM BROWN, WILLIAM BYATT,
JEREMY DAVIS, CHRISTOPHER
CASTILLO, and MONIQUE TRUJILLO
individually and on behalf of all other
similarly situated,

Plaintiffs,

v.

GOOGLE LLC,

Defendant.

Case No. 5:20-cv-03664-LHK-SVK

**PLAINTIFF CHASOM BROWN'S VERIFIED AMENDED OBJECTIONS AND
RESPONSES TO DEFENDANT'S INTERROGATORIES 1, 4, AND 5**

Pursuant to Federal Rules of Civil Procedure 26 and 33, Plaintiff Chasom Brown ("Brown") hereby objects and responds to Defendant's, Google LLC ("Google"), Interrogatories 1, 4, and 5. These objections and responses are made solely for the purpose of and in relation to this action. In addition, the objections and responses set forth in this document are based on Plaintiff Brown's knowledge, investigations, and analysis to date. As discovery proceeds, Plaintiff Brown may become aware of additional facts or evidence and his analysis of the case may change. Plaintiff Brown reserves all rights to supplement and amend his objections and responses accordingly.

INTERROGATORY NO. 1:

Describe with particularity each time YOU reviewed the GOOGLE TERMS OF SERVICE, GOOGLE PRIVACY POLICY, MY GOOGLE ACTIVITY, CHROME INCOGNITO NOTICE, CHROME TERMS OF SERVICE, and/or CHROME PRIVACY NOTICE prior to the filing of the COMPLAINT and, if YOU reviewed such documents, on what date(s) and which version(s) YOU reviewed, and whether YOU reviewed the entire document(s) or only portion(s) of the document(s) (if only portion(s), describe with particularity which portion(s) you reviewed).

ORIGINAL RESPONSE TO INTERROGATORY NO. 1:

Plaintiff Brown objects to Interrogatory No. 1 to the extent it purports to suggest that review of and consent to Google's Privacy Policy is a necessary predicate for any claim in this litigation and not proportional to the needs of this litigation. Plaintiff Brown's allegations relate to Google's conduct of secretly and unlawfully intercepting, collecting, analyzing, and monetizing Plaintiff Brown's (and class members') browsing activity conducted in private browsing mode, despite Google's representations that Plaintiff Brown's (and class members') browsing information would not be saved.

Notwithstanding and subject to these objections, Plaintiff Brown responds that he reviewed the Chrome Incognito Notice (*i.e.*, the Incognito splash screen) and Google's representations contained therein each time he began a private browsing mode session in Chrome. Plaintiff Brown further responds that, at or around the time he opened his Google Account and at times thereafter, he reviewed Google representations that she was in "control" of what information Google collects and could exercise such control by enabling private browsing mode, such as the representations outlined in paragraphs 2 and 42 of the First Amended Complaint. He understands this, along with the Chrome Incognito Notice (*i.e.*, the Incognito splash screen that he reviewed each time he began a private browsing mode session in Chrome), to be the Google Privacy Policy. He does not recall the exact dates he reviewed these disclosures. He likewise does not recall whether he reviewed the other disclosures included in this request, in part because, as described, he is not certain which specific disclosures they refer to.

AMENDED RESPONSE TO INTERROGATORY NO. 1:

Plaintiff Brown objects to Interrogatory No. 1 to the extent it purports to suggest that review of and consent to Google's Privacy Policy is a necessary predicate for any claim in this litigation and not proportional to the needs of this litigation. Plaintiff Brown's allegations relate to Google's conduct of secretly and unlawfully intercepting, collecting, analyzing, and monetizing Plaintiff Brown's (and class members') browsing activity conducted in private browsing mode, despite

1 Google's representations that Plaintiff Brown's (and class members') browsing information would
2 not be saved.

3 Notwithstanding and subject to these objections, Plaintiff Brown responds that he reviewed
4 the Incognito splash screen and Google's representations contained therein each time he began a
5 private browsing mode session in Chrome. Plaintiff Brown further responds that, at or around the
6 time he opened his Google Account, which was in approximately [REDACTED], and at times
7 thereafter, he reviewed Google representations that he was in "control" of what information
8 Google collects, and to the best of his ability recalls receiving an update from Google Chrome that
9 introduced him to the Incognito function that stated he could exercise such control by enabling
10 private browsing mode. He does not recall the exact dates he reviewed these disclosures, or the
11 exact portions of the disclosures reviewed, but believes it was in approximately [REDACTED] and he
12 reviewed the Incognito splash screen each time he began a private browsing mode session in
13 Chrome.

14 **INTERROGATORY NO. 4:**

15 Without limitation as to time period, describe with particularity all websites, applications,
16 or other online services with which YOU voluntarily shared any DATA AT ISSUE.

17 **ORIGINAL RESPONSE TO INTERROGATORY NO. 4:**

18 Plaintiff Brown objects to Interrogatory No. 4 as overly broad, vague, and not proportional
19 to the needs of the litigation, considering Google requests each and every instance when Plaintiff
20 Brown may have shared "data" with a website, application, or other online service, regardless of
21 any time limitation, rendering this Interrogatory No. 4 not possible to fully and accurately answer.
22 In addition, to the extent this request seeks information regarding "data" shared when private
23 browsing mode was not enabled, it is irrelevant. On the basis of these objections, Plaintiff Brown
24 does not intend to respond to Interrogatory No. 4, other than to say that he did not knowingly or
25 voluntarily share any page views (*e.g.*, URL information) while private browsing mode was
26 enabled. Given his uncertainty regarding the meaning of this Interrogatory, Plaintiff Brown is
27 willing to meet and confer with Defendant regarding his objection.
28

CONFIDENTIAL**AMENDED RESPONSE TO INTERROGATORY NO. 4:**

Plaintiff Brown objects to Interrogatory No. 4 as overly broad, vague, and not proportional to the needs of the litigation, considering Google requests each and every instance when Plaintiff Brown may have shared “data” with a website, application, or other online service, regardless of any time limitation, rendering this Interrogatory No. 4 not possible to fully and accurately answer. In addition, to the extent this request seeks information regarding “data” shared when private browsing mode was not enabled, it is irrelevant.

Notwithstanding and subject to these objections, Plaintiff Brown states that, to the extent he can recall, during the Class Period the websites visited most, regardless of whether he was browsing in private browsing mode or not, include: [REDACTED]

[REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED]

Plaintiff Brown further states that, to the extent he can recall, during the Class Period the applications he most used include: [REDACTED];

[REDACTED].

INTERROGATORY NO. 5:

Describe with particularity each time YOU used private browsing mode, including separately identifying for each time the following: the browser, the private browsing mode, the date and time, the device, the websites visited, how long each private browsing session lasted and YOUR location.

ORIGINAL RESPONSE TO INTERROGATORY NO. 5:

Plaintiff Brown objects to Interrogatory No. 5 as overly broad, vague, and not proportional to the needs of the litigation, insofar as Google may be requesting particular details of dates, times, devices, websites visited, the duration of those visits, and Plaintiff Brown’s location while engaged in these activities. Further, Plaintiff Brown chooses the private browsing mode because he does not want this activity tracked, recorded, or otherwise memorialized and, therefore, requiring

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Plaintiff Brown to recall the details sufficient to respond to Interrogatory No. 5 would be unreasonable and not proportional to the needs of the litigation. Further, according to Google's Motion to Dismiss, Google, unlike Plaintiff Brown, collects most if not all of the information requested. Accordingly, Google is in the best position to answer this Interrogatory since it is already in possession of this information.

Notwithstanding and subject to these objections, Plaintiff Brown responds that he used private browsing mode with the specific purpose of that activity not being tracked, recorded, or otherwise memorialized and, therefore, Plaintiff Brown cannot recall the particular details of each and every time he engaged in private browsing mode. Plaintiff Brown used Chrome's private browsing mode for approximately the last two years to browse [REDACTED]

[REDACTED] The vast majority of this private browsing activity was done in Chrome, but Plaintiff Brown may have tried the private browsing mode with Microsoft's web browser once or twice. The overwhelming majority of Plaintiff Brown's private browsing activity was done in [REDACTED]

AMENDED RESPONSE TO INTERROGATORY NO. 5:

Plaintiff Brown objects to Interrogatory No. 5 as overly broad, vague, and not proportional to the needs of the litigation, insofar as Google may be requesting particular details of dates, times, devices, websites visited, the duration of those visits, and Plaintiff Brown's location while engaged in these activities. Further, Plaintiff Brown chooses the private browsing mode because he does not want this activity tracked, recorded, or otherwise memorialized and, therefore, requiring Plaintiff Brown to recall the details sufficient to respond to Interrogatory No. 5 would be unreasonable and not proportional to the needs of the litigation. Further, according to Google's Motion to Dismiss, Google, unlike Plaintiff Brown, collects most if not all of the information requested. Accordingly, Google is in the best position to answer this Interrogatory since it is already in possession of this information.

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1 Notwithstanding and subject to these objections, Plaintiff Brown responds that he used
2 private browsing mode with the specific purpose of that activity not being tracked, recorded, or
3 otherwise memorialized and, therefore, Plaintiff Brown cannot recall the particular details of each
4 and every time he engaged in private browsing mode. Plaintiff Brown used Chrome's private
5 browsing mode for approximately the last two years to browse [REDACTED]

6 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

7 [REDACTED]

8 [REDACTED] The vast majority of this private browsing activity was done in Chrome,
9 but Plaintiff Brown may have tried the private browsing mode with Microsoft's web browser once
10 or twice. The overwhelming majority of Plaintiff Brown's private browsing activity was done in
11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

26 [REDACTED]

27 [REDACTED]

28 [REDACTED]

VERIFICATION

Under penalties of perjury, I declare that I have read the foregoing Answers to Interrogatories, and that the Answers are true and correct to the best of my knowledge and belief.

By: 

Printed Name: Chasom Brown

Title: Mr.

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 2021, by _____, who has produced as identification _____, bearing number _____, expiring _____ and who did (did not) take an oath.

NOTARY PUBLIC SIGNATURE

Dated: May 12, 2021

MORGAN & MORGAN

/s/ John A. Yanchunis

John A. Yanchunis (*pro hac vice*)

Ryan J. McGee (*pro hac vice*)

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PROOF OF SERVICE

I, Ryan J. McGee, declare:

I am a citizen of the United States and employed in the County of Hillsborough, Florida. I am over the age of 18 and not a party to the within action; my business address is 201 N. Franklin St., 7th Floor, Tampa, FL 33602.

On May 12, 2021, I served the following document described as:

Plaintiff's Verified Amended Objections and Responses to Defendant's Interrogatories 1, 4, and 5.

By electronic mail transmission from rmcgee@forthepeople.com on May 12, 2021, by transmitting a PDF format copy of such document to each such person at the e-mail addresses listed below. The document was transmitted by electronic transmission and such transmission was reported as complete and without error:

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21 jonathantse@quinnemanuel.com

22 *Attorney for Defendant*

23 Executed on May 12, 2021, at Tampa, Florida.

24 /s/ Ryan J. McGee
25 Ryan J. McGee, Esq.

EXHIBIT 21

PLAINTIFF WILLIAM BYATT'S VERIFIED AMENDED OBJECTIONS AND RESPONSES TO DEFENDANT'S INTERROGATORIES 1, 4, AND 5

**Redacted Version
of Document Sought
to be Sealed**

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

CHASOM BROWN, WILLIAM BYATT,
JEREMY DAVIS, CHRISTOPHER
CASTILLO, and MONIQUE TRUJILLO
individually and on behalf of all other
similarly situated,

Plaintiffs,

v.

GOOGLE LLC,

Defendant.

Case No. 5:20-cv-03664-LHK-SVK

**PLAINTIFF WILLIAM BYATT'S VERIFIED AMENDED OBJECTIONS AND
RESPONSES TO DEFENDANT'S INTERROGATORIES 1, 4, AND 5**

Pursuant to Federal Rules of Civil Procedure 26 and 33, Plaintiff William Byatt ("Byatt") hereby objects and responds to Defendant's, Google LLC ("Google"), Interrogatories 1, 4, and 5. These objections and responses are made solely for the purpose of and in relation to this action. In addition, the objections and responses set forth in this document are based on Plaintiff Byatt's knowledge, investigations, and analysis to date. As discovery proceeds, Plaintiff Byatt may become aware of additional facts or evidence and his analysis of the case may change. Plaintiff Byatt reserves all rights to supplement and amend his objections and responses accordingly.

INTERROGATORY NO. 1:

Describe with particularity each time YOU reviewed the GOOGLE TERMS OF SERVICE, GOOGLE PRIVACY POLICY, MY GOOGLE ACTIVITY, CHROME INCOGNITO NOTICE, CHROME TERMS OF SERVICE, and/or CHROME PRIVACY NOTICE prior to the filing of the COMPLAINT and, if YOU reviewed such documents, on what date(s) and which version(s) YOU reviewed, and whether YOU reviewed the entire document(s) or only portion(s) of the document(s) (if only portion(s), describe with particularity which portion(s) you reviewed).

ORIGINAL RESPONSE TO INTERROGATORY NO. 1:

Plaintiff Byatt objects to Interrogatory No. 1 to the extent it purports to suggest that review of and consent to Google's Privacy Policy is a necessary predicate for any claim in this litigation and not proportional to the needs of this litigation. Plaintiff Byatt's allegations relate to Google's conduct of secretly and unlawfully intercepting, collecting, analyzing, and monetizing Plaintiff Byatt's (and class members') browsing activity conducted in private browsing mode, despite Google's representations that Plaintiff Byatt's (and class members') browsing information would not be saved.

Notwithstanding and subject to these objections, Plaintiff Byatt responds that he reviewed the Chrome Incognito Notice (*i.e.*, the Incognito splash screen) and Google's representations contained therein each time he began a private browsing mode session in Chrome. Plaintiff Byatt further responds that, at or around the time he opened his Google Account and at times thereafter, he reviewed Google representations that he was in "control" of what information Google collects and could exercise such control by enabling private browsing mode, such as the representations outlined in paragraphs 2 and 42 of the First Amended Complaint. He understands this, along with the Chrome Incognito Notice (*i.e.*, the Incognito splash screen that he reviewed each time he began a private browsing mode session in Chrome), to be the Google Privacy Policy. He does not recall the exact dates he reviewed these disclosures. He likewise does not recall whether he reviewed the other disclosures included in this request, in part because, as described, he is not certain which specific disclosures they refer to.

AMENDED RESONSE TO INTERROGATORY NO. 1:

Plaintiff Byatt objects to Interrogatory No. 1 to the extent it purports to suggest that review of and consent to Google's Privacy Policy is a necessary predicate for any claim in this litigation and not proportional to the needs of this litigation. Plaintiff Byatt's allegations relate to Google's conduct of secretly and unlawfully intercepting, collecting, analyzing, and monetizing Plaintiff Byatt's (and class members') browsing activity conducted in private browsing mode, despite

1 Google's representations that Plaintiff Byatt's (and class members') browsing information would
2 not be saved.

3 Notwithstanding and subject to these objections, Plaintiff Byatt responds that he reviewed
4 the Incognito splash screen and Google's representations contained therein each time he began a
5 private browsing mode session in Chrome. Plaintiff Byatt further responds that, at or around the
6 time he opened his Google Account in [REDACTED] and at times thereafter, he reviewed Google
7 representations in Google's Terms of Service and Chrome Policy that he was in "control" of what
8 information Google collects and could exercise such control by enabling private browsing mode.
9 He does not recall the exact dates he reviewed these disclosures, or the exact portions of the
10 disclosures reviewed, but he occasionally reviewed the disclosures when they were updated, and
11 he does not recall any disclosures that stated Google would continue to collect his information
12 when he entered private browsing mode or that he was not in control of his data, and he reviewed
13 the Incognito splash screen each time he began a private browsing mode session in Chrome.

14 **INTERROGATORY NO. 4:**

15 Without limitation as to time period, describe with particularity all websites, applications,
16 or other online services with which YOU voluntarily shared any DATA AT ISSUE.

17 **ORIGINAL RESPONSE TO INTERROGATORY NO. 4:**

18 Plaintiff Byatt objects to Interrogatory No. 4 as overly broad, vague, and not proportional
19 to the needs of the litigation, considering Google requests each and every instance when Plaintiff
20 Byatt may have shared "data" with a website, application, or other online service, regardless of
21 any time limitation, rendering this Interrogatory No. 4 not possible to fully and accurately answer.
22 In addition, to the extent this request seeks information regarding "data" shared when private
23 browsing mode was not enabled, it is irrelevant. On the basis of these objections, Plaintiff Byatt
24 does not intend to respond to Interrogatory No. 4, other than to say that he did not knowingly or
25 voluntarily share any page views (*e.g.*, URL information) while private browsing mode was
26 enabled. Given his uncertainty regarding the meaning of this Interrogatory, Plaintiff Byatt is
27 willing to meet and confer with Defendant regarding his objection.
28

CONFIDENTIAL**AMENDED RESPONSE TO INTERROGATORY NO. 4:**

Plaintiff Byatt objects to Interrogatory No. 4 as overly broad, vague, and not proportional to the needs of the litigation, considering Google requests each and every instance when Plaintiff Byatt may have shared “data” with a website, application, or other online service, regardless of any time limitation, rendering this Interrogatory No. 4 not possible to fully and accurately answer. In addition, to the extent this request seeks information regarding “data” shared when private browsing mode was not enabled, it is irrelevant.

Notwithstanding and subject to these objections, Plaintiff Byatt states that, to the extent he can recall, during the Class Period the websites visited most, regardless of whether he was browsing in private browsing mode or not, include: [REDACTED]

[REDACTED] Plaintiff Byatt further states that, to the extent he can recall, during the Class Period the applications he most used include: [REDACTED]

INTERROGATORY NO. 5:

Describe with particularity each time YOU used private browsing mode, including separately identifying for each time the following: the browser, the private browsing mode, the date and time, the device, the websites visited, how long each private browsing session lasted and YOUR location.

ORIGINAL RESPONSE TO INTERROGATORY NO. 5:

Plaintiff Byatt objects to Interrogatory No. 5 as overly broad, vague, and not proportional to the needs of the litigation, insofar as Google may be requesting particular details of dates, times, devices, websites visited, the duration of those visits, and Plaintiff Byatt’s location while engaged in these activities. Further, Plaintiff Byatt chooses the private browsing mode because he does not want this activity tracked, recorded, or otherwise memorialized and, therefore, requiring Plaintiff

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1 Byatt to recall the details sufficient to respond to Interrogatory No. 5 would be unreasonable and
2 not proportional to the needs of the litigation. Further, according to Google's Motion to Dismiss,
3 Google, unlike Plaintiff Byatt, collects most if not all of the information requested. Accordingly,
4 Google is in the best position to answer this Interrogatory since it is already in possession of this
5 information.

6 Notwithstanding and subject to these objections, Plaintiff Byatt responds that he used
7 private browsing mode with the specific purpose of that activity not being tracked, recorded, or
8 otherwise memorialized and, therefore, Plaintiff Byatt cannot recall the particular details of each
9 and every time he engaged in private browsing mode. Plaintiff Byatt used Chrome's private
10 browsing mode, and recalls using the Chrome private browsing mode to browse [REDACTED]
11 [REDACTED]. The overwhelming majority of this private browsing activity was done in
12 Chrome, but Plaintiff Byatt may have browsed privately in Firefox, but cannot recall any specific
13 details of that activity. The majority of Plaintiff Byatt's private browsing activity was done in
14 [REDACTED]

AMENDED RESPONSE TO INTERROGATORY NO. 5:

15
16 Plaintiff Byatt objects to Interrogatory No. 5 as overly broad, vague, and not proportional
17 to the needs of the litigation, insofar as Google may be requesting particular details of dates, times,
18 devices, websites visited, the duration of those visits, and Plaintiff Byatt's location while engaged
19 in these activities. Further, Plaintiff Byatt chooses the private browsing mode because he does not
20 want this activity tracked, recorded, or otherwise memorialized and, therefore, requiring Plaintiff
21 Byatt to recall the details sufficient to respond to Interrogatory No. 5 would be unreasonable and
22 not proportional to the needs of the litigation. Further, according to Google's Motion to Dismiss,
23 Google, unlike Plaintiff Byatt, collects most if not all of the information requested. Accordingly,
24 Google is in the best position to answer this Interrogatory since it is already in possession of this
25 information.

26 Notwithstanding and subject to these objections, Plaintiff Byatt responds that he used
27 private browsing mode with the specific purpose of that activity not being tracked, recorded, or
28

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1 otherwise memorialized and, therefore, Plaintiff Byatt cannot recall the particular details of each
2 and every time he engaged in private browsing mode. Plaintiff Byatt used Chrome's private
3 browsing mode, and recalls using the Chrome private browsing mode to browse [REDACTED]
4 [REDACTED]

5 [REDACTED]. The overwhelming majority of this private browsing activity was done in
6 Chrome, but Plaintiff Byatt may have browsed privately in Firefox, but cannot recall any specific
7 details of that activity. The majority of Plaintiff Byatt's private browsing activity was done in
8 [REDACTED]
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VERIFICATION

Under penalties of perjury, I declare that I have read the foregoing Answers to Interrogatories, and that the Answers are true and correct to the best of my knowledge and belief.

By: 

Printed Name: William J Byatt

Title: _____

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 2021, by _____, who has produced as identification _____, bearing number _____, expiring _____ and who did (did not) take an oath.

NOTARY PUBLIC SIGNATURE

1 Dated: May 12, 2021

MORGAN & MORGAN

2 /s/ John A. Yanchunis

3 John A. Yanchunis (*pro hac vice*)

4 Ryan J. McGee (*pro hac vice*)

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Attorneys for Plaintiffs

PROOF OF SERVICE

I, Ryan J. McGee, declare:

I am a citizen of the United States and employed in the County of Hillsborough, Florida. I am over the age of 18 and not a party to the within action; my business address is 201 N. Franklin St., 7th Floor, Tampa, FL 33602.

On May 12, 2021, I served the following document described as:

Plaintiff's Verified Amended Objections and Responses to Defendant's Interrogatories 1, 4, and 5.

By electronic mail transmission from rmcgee@forthepeople.com on May 12, 2021, by transmitting a PDF format copy of such document to each such person at the e-mail addresses listed below. The document was transmitted by electronic transmission and such transmission was reported as complete and without error:

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22 *Attorney for Defendant*

23 Executed on May 12, 2021, at Tampa, Florida.

24 /s/ Ryan J. McGee
25 Ryan J. McGee, Esq.

EXHIBIT 22

PLAINTIFF

CHRISTOPHER

CASTILLO'S VERIFIED

AMENDED OBJECTIONS

AND RESPONSES TO

DEFENDANT'S

INTERROGATORIES 1, 4,

AND 5

Redacted Version of

Document Sought

to be Sealed

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

CHASOM BROWN, WILLIAM BYATT,
JEREMY DAVIS, CHRISTOPHER
CASTILLO, and MONIQUE TRUJILLO
individually and on behalf of all other
similarly situated,

Plaintiffs,

v.

GOOGLE LLC,

Defendant.

Case No. 5:20-cv-03664-LHK-SVK

**PLAINTIFF CHRISTOPHER CASTILLO'S VERIFIED AMENDED OBJECTIONS AND
RESPONSES TO DEFENDANT'S INTERROGATORIES 1, 4, AND 5**

Pursuant to Federal Rules of Civil Procedure 26 and 33, Plaintiff Christopher Castillo ("Castillo") hereby objects and responds to Defendant's, Google LLC ("Google"), Interrogatories 1, 4, and 5. These objections and responses are made solely for the purpose of and in relation to this action. In addition, the objections and responses set forth in this document are based on Plaintiff Castillo's knowledge, investigations, and analysis to date. As discovery proceeds, Plaintiff Castillo may become aware of additional facts or evidence and his analysis of the case may change. Plaintiff Castillo reserves all rights to supplement and amend his objections and responses accordingly.

INTERROGATORY NO. 1:

Describe with particularity each time YOU reviewed the GOOGLE TERMS OF SERVICE, GOOGLE PRIVACY POLICY, MY GOOGLE ACTIVITY, CHROME INCOGNITO NOTICE, CHROME TERMS OF SERVICE, and/or CHROME PRIVACY NOTICE prior to the filing of the COMPLAINT and, if YOU reviewed such documents, on what date(s) and which version(s) YOU reviewed, and whether YOU reviewed the entire document(s) or only portion(s) of the document(s) (if only portion(s), describe with particularity which portion(s) you reviewed).

ORIGINAL RESPONSE TO INTERROGATORY NO. 1:

Plaintiff Castillo objects to Interrogatory No. 1 to the extent it purports to suggest that review of and consent to Google's Privacy Policy is a necessary predicate for any claim in this litigation and not proportional to the needs of this litigation. Plaintiff Castillo's allegations relate to Google's conduct of secretly and unlawfully intercepting, collecting, analyzing, and monetizing Plaintiff Castillo's (and class members') browsing activity conducted in private browsing mode, despite Google's representations that Plaintiff Castillo's (and class members') browsing information would not be saved.

Notwithstanding and subject to these objections, Plaintiff Castillo responds that he reviewed the Chrome Incognito Notice (i.e., the Incognito splash screen) and Google's representations contained therein each time he began a private browsing mode session in Chrome. Plaintiff Castillo further responds that, at or around the time he opened his Google Account and at times thereafter, he reviewed Google representations that he was in "control" of what information Google collects and could exercise such control by enabling private browsing mode, such as the representations outlined in paragraphs 2 and 42 of the First Amended Complaint. He understands this, along with the Chrome Incognito Notice (i.e., the Incognito splash screen that he reviewed each time he began a private browsing mode session in Chrome), to be the Google Privacy Policy. He does not recall the exact dates he reviewed these disclosures. He likewise does not recall whether he reviewed the other disclosures included in this request, in part because, as described, he is not certain which specific disclosures they refer to.

AMENDED RESPONSE TO INTERROGATORY NO. 1:

Plaintiff Castillo objects to Interrogatory No. 1 to the extent it purports to suggest that review of and consent to Google's Privacy Policy is a necessary predicate for any claim in this litigation and not proportional to the needs of this litigation. Plaintiff Castillo's allegations relate to Google's conduct of secretly and unlawfully intercepting, collecting, analyzing, and monetizing Plaintiff Castillo's (and class members') browsing activity conducted in private browsing mode,

1 despite Google's representations that Plaintiff Castillo's (and class members') browsing
2 information would not be saved.

3 Notwithstanding and subject to these objections, Plaintiff Castillo responds that he
4 reviewed the Incognito splash screen and Google's representations contained therein each time he
5 began a private browsing mode session in Chrome. Plaintiff Castillo further responds that, at or
6 around the time he opened his Google Account in approximately [REDACTED] and at times thereafter, he
7 reviewed Google representations in Google's Privacy Policy and Chrome Policy that he was in
8 "control" of what information Google collects and could exercise such control by enabling private
9 browsing mode. He does not recall the exact dates he reviewed these disclosures, but the
10 disclosures he recalls reviewing were substantially similar to the disclosures stating that he was in
11 control of his data, and he reviewed the Incognito splash screen each time he began a private
12 browsing mode session in Chrome.

13 **INTERROGATORY NO. 4:**

14 Without limitation as to time period, describe with particularity all websites, applications,
15 or other online services with which YOU voluntarily shared any DATA AT ISSUE.

16 **ORIGINAL RESPONSE TO INTERROGATORY NO. 4:**

17 Plaintiff Castillo objects to Interrogatory No. 4 as overly broad, vague, and not proportional
18 to the needs of the litigation, considering Google requests each and every instance when Plaintiff
19 Castillo may have shared "data" with a website, application, or other online service, regardless of
20 any time limitation, rendering this Interrogatory No. 4 not possible to fully and accurately answer.
21 In addition, to the extent this request seeks information regarding "data" shared when private
22 browsing mode was not enabled, it is irrelevant. On the basis of these objections, Plaintiff Castillo
23 does not intend to respond to Interrogatory No. 4, other than to say that he did not knowingly or
24 voluntarily share any page views (i.e., URL information) while private browsing mode was
25 enabled. Given his uncertainty regarding the meaning of this Interrogatory, Plaintiff Castillo is
26 willing to meet and confer with Defendant regarding his objection.
27
28

CONFIDENTIAL**AMENDED RESPONSE TO INTERROGATORY NO. 4:**

Plaintiff Castillo objects to Interrogatory No. 4 as overly broad, vague, and not proportional to the needs of the litigation, considering Google requests each and every instance when Plaintiff Castillo may have shared "data" with a website, application, or other online service, regardless of any time limitation, rendering this Interrogatory No. 4 not possible to fully and accurately answer. In addition, to the extent this request seeks information regarding "data" shared when private browsing mode was not enabled, it is irrelevant.

Notwithstanding and subject to these objections, Plaintiff Castillo states that, to the extent he can recall, during the Class Period the websites he visited most, regardless of whether he was browsing in private browsing mode or not, include:

[REDACTED]

[REDACTED] Plaintiff Castillo further states that, to the extent he can recall, during the Class Period the applications he used most include:

[REDACTED]

INTERROGATORY NO. 5:

Describe with particularity each time YOU used private browsing mode, including separately identifying for each time the following: the browser, the private browsing mode, the date and time, the device, the websites visited, how long each private browsing session lasted and YOUR location.

ORIGINAL RESPONSE TO INTERROGATORY NO. 5:

Plaintiff Castillo objects to Interrogatory No. 5 as overly broad, vague, and not proportional to the needs of the litigation, insofar as Google may be requesting particular details of dates, times, devices, websites visited, the duration of those visits, and Plaintiff Castillo's location while

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engaged in these activities. Further, Plaintiff Castillo chooses the private browsing mode because he does not want this activity tracked, recorded, or otherwise memorialized and, therefore, requiring Plaintiff Castillo to recall the details sufficient to respond to Interrogatory No. 5 would be unreasonable and not proportional to the needs of the litigation. Further, according to Google's Motion to Dismiss, Google, unlike Plaintiff Castillo, collects most if not all of the information requested. Accordingly, Google is in the best position to answer this Interrogatory since it is already in possession of this information.

Notwithstanding and subject to these objections, Plaintiff Castillo responds that he used private browsing mode with the specific purpose of that activity not being tracked, recorded, or otherwise memorialized and, therefore, Plaintiff Castillo cannot recall the particular details of each and every time he engaged in private browsing mode. Plaintiff Castillo used Chrome's private browsing mode, and recalls using the Chrome private browsing mode in approximately [REDACTED] and [REDACTED] to browse [REDACTED] on his desktop computer and phone. Also, more recently Plaintiff Castillo used Chrome's private browsing mode to [REDACTED]

[REDACTED] Otherwise, Plaintiff Castillo occasionally uses Chrome's private browsing mode to [REDACTED] The majority of Plaintiff Castillo's private browsing activity was done in [REDACTED]

AMENDED RESPONSE TO INTERROGATORY NO. 5:

Plaintiff Castillo objects to Interrogatory No. 5 as overly broad, vague, and not proportional to the needs of the litigation, insofar as Google may be requesting particular details of dates, times, devices, websites visited, the duration of those visits, and Plaintiff Castillo's location while engaged in these activities. Further, Plaintiff Castillo chooses the private browsing mode because he does not want this activity tracked, recorded, or otherwise memorialized and, therefore, requiring Plaintiff Castillo to recall the details sufficient to respond to Interrogatory No. 5 would be unreasonable and not proportional to the needs of the litigation. Further, according to Google's Motion to Dismiss, Google, unlike Plaintiff Castillo, collects most if not all of the information

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1 requested. Accordingly, Google is in the best position to answer this Interrogatory since it is
2 already in possession of this information.

3 Notwithstanding and subject to these objections, Plaintiff Castillo responds that he used
4 private browsing mode with the specific purpose of that activity not being tracked, recorded, or
5 otherwise memorialized and, therefore, Plaintiff Castillo cannot recall the particular details of each
6 and every time he engaged in private browsing mode. Plaintiff Castillo used Chrome's private
7 browsing mode, and recalls using the Chrome private browsing mode in approximately [REDACTED] and
8 [REDACTED] to browse [REDACTED] on his desktop computer and
9 phone. Also, more recently Plaintiff Castillo used Chrome's private browsing mode to [REDACTED]
10 [REDACTED]
11 [REDACTED] Otherwise, Plaintiff Castillo occasionally uses Chrome's private
12 browsing mode to [REDACTED]
13 [REDACTED]. The majority of Plaintiff Castillo's private browsing activity was done
14 in [REDACTED]
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VERIFICATION

Under penalties of perjury, I declare that I have read the foregoing Answers to Interrogatories, and that the Answers are true and correct to the best of my knowledge and belief.

By: Chris Castillo

Printed Name: Christopher Castillo

Title: MR.

STATE OF California

COUNTY OF Sacramento

The foregoing instrument was acknowledged before me this ____ day of _____, 2021, by _____, who has produced as identification _____, bearing number _____, expiring _____ and who did (did not) take an oath.

NOTARY PUBLIC SIGNATURE

Dated: May 12, 2021

MORGAN & MORGAN

/s/ John A. Yanchunis

John A. Yanchunis (*pro hac vice*)

Ryan J. McGee (*pro hac vice*)

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Attorneys for Plaintiffs

PROOF OF SERVICE

I, Ryan J. McGee, declare:

I am a citizen of the United States and employed in the County of Hillsborough, Florida. I am over the age of 18 and not a party to the within action; my business address is 201 N. Franklin St., 7th Floor, Tampa, FL 33602.

On May 12, 2021, I served the following document described as:

Plaintiff's Verified Amended Objections and Responses to Defendant's Interrogatories 1, 4, and 5.

By electronic mail transmission from rmcgee@forthepeople.com on May 12, 2021, by transmitting a PDF format copy of such document to each such person at the e-mail addresses listed below. The document was transmitted by electronic transmission and such transmission was reported as complete and without error:

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21 jonathantse@quinnemanuel.com

22 *Attorney for Defendant*

23 Executed on May 12, 2021, at Tampa, Florida.

24 /s/ Ryan J. McGee
25 Ryan J. McGee, Esq.

EXHIBIT 23

PLAINTIFF JEREMY DAVIS' VERIFIED AMENDED OBJECTIONS AND RESPONSES TO DEFENDANT'S INTERROGATORIES 1, 4, AND 5

**Redacted Version of
Document Sought
to be Sealed**

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

CHASOM BROWN, WILLIAM BYATT,
JEREMY DAVIS, CHRISTOPHER
CASTILLO, and MONIQUE TRUJILLO
individually and on behalf of all other
similarly situated,

Plaintiffs,

v.

GOOGLE LLC,

Defendant.

Case No. 5:20-cv-03664-LHK-SVK

**PLAINTIFF JEREMY DAVIS' VERIFIED AMENDED OBJECTIONS AND
RESPONSES TO DEFENDANT'S INTERROGATORIES 1, 4, AND 5**

Pursuant to Federal Rules of Civil Procedure 26 and 33, Plaintiff Jeremy Davis ("Davis") hereby objects and responds to Defendant's, Google LLC ("Google"), Interrogatories 1, 4, and 5. These objections and responses are made solely for the purpose of and in relation to this action. In addition, the objections and responses set forth in this document are based on Plaintiff Davis' knowledge, investigations, and analysis to date. As discovery proceeds, Plaintiff Davis may become aware of additional facts or evidence and his analysis of the case may change. Plaintiff Davis reserves all rights to supplement and amend his objections and responses accordingly.

INTERROGATORY NO. 1:

Describe with particularity each time YOU reviewed the GOOGLE TERMS OF SERVICE, GOOGLE PRIVACY POLICY, MY GOOGLE ACTIVITY, CHROME INCOGNITO NOTICE, CHROME TERMS OF SERVICE, and/or CHROME PRIVACY NOTICE prior to the filing of the COMPLAINT and, if YOU reviewed such documents, on what date(s) and which version(s) YOU reviewed, and whether YOU reviewed the entire document(s) or only portion(s) of the document(s) (if only portion(s), describe with particularity which portion(s) you reviewed).

ORIGINAL RESPONSE TO INTERROGATORY NO. 1:

Plaintiff Davis objects to Interrogatory No. 1 to the extent it purports to suggest that review of and consent to Google's Privacy Policy is a necessary predicate for any claim in this litigation and not proportional to the needs of this litigation. Plaintiff Davis' allegations relate to Google's conduct of secretly and unlawfully intercepting, collecting, analyzing, and monetizing Plaintiff Davis' (and class members') browsing activity conducted in private browsing mode, despite Google's representations that Plaintiff Davis' (and class members') browsing information would not be saved.

Notwithstanding and subject to these objections, Plaintiff Davis responds that he reviewed the Chrome Incognito Notice (i.e., the Incognito splash screen) and Google's representations contained therein each time he began a private browsing mode session in Chrome. Plaintiff Davis further responds that, at or around the time he opened his Google Account and at times thereafter, he reviewed Google representations that he was in "control" of what information Google collects and could exercise such control by enabling private browsing mode, such as the representations outlined in paragraphs 2 and 42 of the First Amended Complaint. He understands this, along with the Chrome Incognito Notice (i.e., the Incognito splash screen that he reviewed each time he began a private browsing mode session in Chrome), to be the Google Privacy Policy. He does not recall the exact dates he reviewed these disclosures. He likewise does not recall whether he reviewed the other disclosures included in this request, in part because, as described, he is not certain which specific disclosures they refer to.

AMENDED RESPONSE TO INTERROGATORY NO. 1:

Plaintiff Davis objects to Interrogatory No. 1 to the extent it purports to suggest that review of and consent to Google's Privacy Policy is a necessary predicate for any claim in this litigation and not proportional to the needs of this litigation. Plaintiff Davis' allegations relate to Google's conduct of secretly and unlawfully intercepting, collecting, analyzing, and monetizing Plaintiff Davis' (and class members') browsing activity conducted in private browsing mode, despite

1 Google's representations that Plaintiff Davis' (and class members') browsing information would
2 not be saved.

3 Notwithstanding and subject to these objections, Plaintiff Davis responds that he reviewed
4 the Incognito splash screen and Google's representations contained therein each time he began a
5 private browsing mode session in Chrome. Plaintiff Davis further responds that, at or around the
6 time he opened his Google Account, which was created when Gmail was in beta in approximately
7 [REDACTED] and at times thereafter, he reviewed Google representations that he was in "control" of what
8 information Google collects, and to the best of his ability recalls an update from Google Chrome
9 that introduced him to the Incognito function that stated he could exercise such control by enabling
10 private browsing mode. He does not recall the exact dates he reviewed updated disclosures and
11 cannot recall any statement by Google that Google would collect his information when he was
12 using private browsing mode, and he reviewed the Incognito splash screen each time he began a
13 private browsing mode session in Chrome.

14 **INTERROGATORY NO. 4:**

15 Without limitation as to time period, describe with particularity all websites, applications,
16 or other online services with which YOU voluntarily shared any DATA AT ISSUE.

17 **ORIGINAL RESPONSE TO INTERROGATORY NO. 4:**

18 Plaintiff Davis objects to Interrogatory No. 4 as overly broad, vague, and not proportional
19 to the needs of the litigation, considering Google requests each and every instance when Plaintiff
20 Davis may have shared "data" with a website, application, or other online service, regardless of
21 any time limitation, rendering this Interrogatory No. 4 not possible to fully and accurately answer.
22 In addition, to the extent this request seeks information regarding "data" shared when private
23 browsing mode was not enabled, it is irrelevant. On the basis of these objections, Plaintiff Davis
24 does not intend to respond to Interrogatory No. 4, other than to say that he did not knowingly or
25 voluntarily share any page views (*e.g.*, URL information) while private browsing mode was
26 enabled. Given his uncertainty regarding the meaning of this Interrogatory, Plaintiff Davis is
27 willing to meet and confer with Defendant regarding his objection.
28

CONFIDENTIAL**AMENDED RESPONSE TO INTERROGATORY NO. 4:**

Plaintiff Davis objects to Interrogatory No. 4 as overly broad, vague, and not proportional to the needs of the litigation, considering Google requests each and every instance when Plaintiff Davis may have shared "data" with a website, application, or other online service, regardless of any time limitation, rendering this Interrogatory No. 4 not possible to fully and accurately answer. In addition, to the extent this request seeks information regarding "data" shared when private browsing mode was not enabled, it is irrelevant.

Notwithstanding and subject to these objections, Plaintiff Davis states that, to the extent he can recall, during the Class Period the websites he visited most, regardless of whether he was browsing in private browsing mode or not, include: [REDACTED]

Plaintiff Davis further states that, to the extent he can recall, during the Class Period the applications he used most include: [REDACTED]

INTERROGATORY NO. 5:

Describe with particularity each time YOU used private browsing mode, including separately identifying for each time the following: the browser, the private browsing mode, the date and time, the device, the websites visited, how long each private browsing session lasted and YOUR location.

ORIGINAL RESPONSE TO INTERROGATORY NO. 5:

Plaintiff Davis objects to Interrogatory No. 5 as overly broad, vague, and not proportional to the needs of the litigation, insofar as Google may be requesting particular details of dates, times, devices, websites visited, the duration of those visits, and Plaintiff Davis' location while engaged in these activities. Further, Plaintiff Davis chooses the private browsing mode because he does not

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1 want this activity tracked, recorded, or otherwise memorialized and, therefore, requiring Plaintiff
2 Davis to recall the details sufficient to respond to Interrogatory No. 5 would be unreasonable and
3 not proportional to the needs of the litigation. Further, according to Google's Motion to Dismiss,
4 Google, unlike Plaintiff Davis, collects most if not all of the information requested. Accordingly,
5 Google is in the best position to answer this Interrogatory since it is already in possession of this
6 information.

7 Notwithstanding and subject to these objections, Plaintiff Davis responds that the
8 overwhelming majority of his browsing activity is done by default in private browsing mode in
9 Chrome. In fact, Plaintiff Davis utilizes private browsing mode by default on all of his devices and
10 web browsers (Chrome on his laptops and tablets, Chrome and Safari on his iPhone), and to the
11 best of Plaintiff Davis' knowledge, the only time browsing activity may be done outside of private
12 browsing mode is when Plaintiff Davis clicks a hyperlink from an email and that hyperlink
13 launches his browser in non-private browsing mode. Otherwise, all of Plaintiff Davis' browsing
14 activity is performed in private browsing mode. The majority of Plaintiff Davis' private browsing
15 activity was done in [REDACTED]

16 **AMENDED RESPONSE TO INTERROGATORY NO. 5:**

17 Plaintiff Davis objects to Interrogatory No. 5 as overly broad, vague, and not proportional
18 to the needs of the litigation, insofar as Google may be requesting particular details of dates, times,
19 devices, websites visited, the duration of those visits, and Plaintiff Davis' location while engaged
20 in these activities. Further, Plaintiff Davis chooses the private browsing mode because he does not
21 want this activity tracked, recorded, or otherwise memorialized and, therefore, requiring Plaintiff
22 Davis to recall the details sufficient to respond to Interrogatory No. 5 would be unreasonable and
23 not proportional to the needs of the litigation. Further, according to Google's Motion to Dismiss,
24 Google, unlike Plaintiff Davis, collects most if not all of the information requested. Accordingly,
25 Google is in the best position to answer this Interrogatory since it is already in possession of this
26 information.
27
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1 Notwithstanding and subject to these objections, Plaintiff Davis responds that the
2 overwhelming majority of his browsing activity is done by default in private browsing mode in
3 Chrome. In fact, Plaintiff Davis utilizes private browsing mode by default on all of his devices and
4 web browsers (Chrome on his laptops and tablets, Chrome and Safari on his iPhone), and to the
5 best of Plaintiff Davis' knowledge, the only time browsing activity may be done outside of private
6 browsing mode is when Plaintiff Davis clicks a hyperlink from an email and that hyperlink
7 launches his browser in non-private browsing mode. Otherwise, all of Plaintiff Davis' browsing
8 activity is performed in private browsing mode, and his response to Interrogatory No. 4 above
9 provides examples of that private browsing activity. The majority of Plaintiff Davis' private
10 browsing activity was done in [REDACTED]

VERIFICATION

Under penalties of perjury, I declare that I have read the foregoing Answers to Interrogatories, and that the Answers are true and correct to the best of my knowledge and belief.

By: 

Printed Name: Jeremy Davis

Title: _____

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 2021, by _____, who has produced as identification _____, bearing number _____, expiring _____ and who did (did not) take an oath.

NOTARY PUBLIC SIGNATURE

1 Dated: May 12, 2021

MORGAN & MORGAN

2 /s/ John A. Yanchunis

3 John A. Yanchunis (*pro hac vice*)

4 Ryan J. McGee (*pro hac vice*)

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PROOF OF SERVICE

I, Ryan J. McGee, declare:

I am a citizen of the United States and employed in the County of Hillsborough, Florida. I am over the age of 18 and not a party to the within action; my business address is 201 N. Franklin St., 7th Floor, Tampa, FL 33602.

On May 12, 2021, I served the following document described as:

Plaintiff's Verified Amended Objections and Responses to Defendant's Interrogatories 1, 4, and 5.

By electronic mail transmission from rmcgee@forthepeople.com on May 12, 2021, by transmitting a PDF format copy of such document to each such person at the e-mail addresses listed below. The document was transmitted by electronic transmission and such transmission was reported as complete and without error:

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15 *Attorney for Defendant*

16 Executed on May 12, 2021, at Tampa, Florida.

17
18 /s/ Ryan J. McGee
19 Ryan J. McGee, Esq.
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EXHIBIT 24

PLAINTIFF CHASOM BROWN'S AMENDED OBJECTIONS AND RESPONSES TO DEFENDANT'S SECOND SET OF INTERROGATORIES

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

CHASOM BROWN, WILLIAM BYATT,
JEREMY DAVIS, CHRISTOPHER
CASTILLO, and MONIQUE TRUJILLO
individually and on behalf of all other
similarly situated,

Plaintiffs,

v.

GOOGLE LLC,

Defendant.

Case No. 5:20-cv-03664-LHK-SVK

**PLAINTIFF CHASOM BROWN'S AMENDED OBJECTIONS AND RESPONSES
TO DEFENDANT'S SECOND SET OF INTERROGATORIES**

Pursuant to Federal Rules of Civil Procedure 26 and 33, Plaintiff Chasom Brown ("Brown") hereby objects and responds to Defendant's, Google LLC ("Google"), Second Set of Interrogatories (Nos. 7–10). These objections and responses are made solely for the purpose of and in relation to this action. In addition, the objections and responses set forth in this document are based on Plaintiff Brown's knowledge, investigations, and analysis to date. As discovery proceeds, Plaintiff Brown may become aware of additional facts or evidence and his analysis of the case may change. Plaintiff Brown reserves all rights to supplement and amend his objections and responses accordingly.

INTERROGATORY NO. 7:

Describe with particularity each specific "Google representation" that YOU allege led YOU to "believe[] that [YOUR] data would not be collected by Google and that Google would not intercept [YOUR] communications when [YOU] were in 'private browsing mode,'" see FAC ¶¶ 3, 149, including by stating whether YOU in fact reviewed each representation and, if so, when YOU first reviewed each representation, and whether YOU in fact relied upon each representation in using private browsing mode.

ORIGINAL RESPONSE TO INTERROGATORY NO. 7:

Plaintiff Brown objects to Interrogatory No. 7 as not relevant to the claims and/or defenses of this case to the extent it purports to suggest that review of and consent to Google's Privacy Policy is a necessary predicate for any claim in this litigation and not proportional to the needs of this litigation. Plaintiff Brown's allegations relate to Google's conduct of secretly and unlawfully intercepting, collecting, analyzing, and monetizing Plaintiff Brown's (and class members') browsing activity conducted in private browsing mode, despite Google's representations that Plaintiff Brown's (and class members') browsing information would not be saved.

Notwithstanding and subject to these objections, Plaintiff Brown responds that he reviewed the Chrome Incognito Notice (i.e., the Incognito splash screen) and Google's representations contained therein each time he began a private browsing mode session in Chrome. Plaintiff Brown further responds that, at or around the time he opened his Google Account and at times thereafter, he reviewed Google representations that he was in "control" of what information Google collects and could exercise such control by enabling private browsing mode, such as the representations outlined in paragraphs 2 and 42 of the First Amended Complaint. He understands this, along with the Chrome Incognito Notice (i.e., the Incognito splash screen that he reviewed each time he began a private browsing mode session in Chrome), to represent that Google would not intercept his communications when he was in private browsing mode. He does not recall the exact dates he reviewed these disclosures for the first time or thereafter. He likewise does not recall whether he reviewed any other disclosures.

AMENDED RESPONSE TO INTERROGATORY NO. 7:

Plaintiff Brown objects to Interrogatory No. 7 as not relevant to the claims and/or defenses of this case to the extent it purports to suggest that review of and consent to Google's Terms of Service, or any terms of service, privacy policies, or other notices incorporated therein, is a necessary predicate for any claim in this litigation and not proportional to the needs of this litigation. Plaintiff Brown's allegations relate to Google's conduct of secretly and unlawfully intercepting, collecting, analyzing, and monetizing Plaintiff Brown's (and class members')

1 browsing activity conducted in private browsing mode, despite Google’s representations that
2 Plaintiff Brown’s (and class members’) browsing information would not be saved.

3 Notwithstanding and subject to these objections, Plaintiff Brown responds that, although
4 he is not sure whether he reviewed the Google Terms of Service, which incorporate the Google
5 Chrome and Chrome OS Additional Terms of Service, the Chrome Privacy Notice, the Privacy
6 Policy, the “Search & Browse Privately” page, and the Incognito Screen—he did review the
7 Incognito splash screen and Google’s representations contained therein each time he began a
8 private browsing mode session in Chrome, which did not state that Google would intercept and
9 collect his private browsing activity.

10 **INTERROGATORY NO. 8:**

11 Describe with particularity each category of “personal and sensitive user data” that YOU
12 contend Google unlawfully “intercepted.” *See* FAC ¶ 1.

13 **RESPONSE TO INTERROGATORY NO. 8:**

14 Plaintiff Brown objects to Interrogatory No. 8. as overly broad, vague, and not proportional
15 to the needs of the litigation, considering this interrogatory requires the identification of each and
16 every instance when Google unlawfully intercepted Plaintiff Brown’s data in order to categorize
17 such data, rendering this Interrogatory No. 8 not possible to fully and accurately answer.

18 Notwithstanding and subject to these objections, Plaintiff Brown responds that each and
19 every time that Plaintiff Brown (and class members) used private browsing mode, Google
20 intercepted at least the following categories of personal and sensitive user data: 1) the “GET
21 request,” which provides the content the user’s browsing software asked the website to display
22 while in private browsing mode; 2) the unique internet protocol (“IP”) address of the user’s
23 connection to the internet while in private browsing mode; 3) information identifying the browser
24 software that the user is using, including any “fingerprint” data (such as user interactions with
25 Google’s special, unique fonts and pixels) that allow Google to further track and identify a
26 particular user, while in private browsing mode; 4) any “User-ID” the website issued to the user
27 while in private browsing mode, allowing Google to track and match the user across other websites
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1 the user visits, whether in private browsing mode or not; 5) the geolocation of the user while in
2 private browsing mode; and 6) information contained in “Google cookies” from prior browsing
3 sessions which, at a minimum, contain the prior websites the user has viewed, and may also contain
4 usernames, login information, browsing activity (such as clicking buttons on websites), which in
5 turn helps Google enrich Google’s profile on the user, which Google then uses for its own benefit
6 and profit.

7 **INTERROGATORY NO. 9:**

8 Describe with particularity YOUR understanding of the terms “private browsing” and
9 “browse privately” in the Google disclosures that YOU allege led YOU to “believe[] that [YOUR]
10 data would not be collected by Google and that Google would not intercept [YOUR]
11 communications when [YOU] were in ‘private browsing mode,’” *see* FAC ¶ 3, including by stating
12 the basis for YOUR understanding and stating whether YOU believed using private browsing
13 would completely conceal YOUR internet browsing activity from everyone, or if not, identifying
14 the persons or entities which YOU understood would still be able to view YOUR internet browsing
15 activity when YOU were in private browsing mode.

16 **ORIGINAL RESPONSE TO INTERROGATORY NO. 9:**

17 Plaintiff Brown objects to Interrogatory No. 9 as not relevant to the claims and/or defenses
18 of this case to the extent it purports to suggest that review of and consent to Google’s Privacy
19 Policy is a necessary predicate for any claim in this litigation and not proportional to the needs of
20 this litigation. Plaintiff Brown’s allegations relate to Google’s conduct of secretly and unlawfully
21 intercepting, collecting, analyzing, and monetizing Plaintiff Brown’s (and class members’)
22 browsing activity conducted in private browsing mode, despite Google’s representations that
23 Plaintiff Brown’s (and class members’) browsing information would not be saved.

24 Notwithstanding and subject to these objections, Plaintiff Brown responds that he reviewed
25 the Chrome Incognito Notice (i.e., the Incognito splash screen) and Google’s representations
26 contained therein each time he began a private browsing mode session in Chrome. Plaintiff Brown
27 further responds that, at or around the time he opened his Google Account and at times thereafter,
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1 he reviewed Google representations that he was in “control” of what information Google collects
2 and could exercise such control by enabling private browsing mode, such as the representations
3 outlined in paragraphs 2 and 42 of the First Amended Complaint. He understands this, along with
4 the Chrome Incognito Notice (i.e., the Incognito splash screen that he reviewed each time he began
5 a private browsing mode session in Chrome), to represent that Google would not intercept his
6 communications when he was in private browsing mode. He does not recall whether he reviewed
7 any other disclosures. He further responds that he understood that certain information “might” still
8 be visible to the websites he visited, his employer or school if the browsing occurred on those
9 networks or computers, and his internet service provider, but he never consented to Google’s
10 concurrent interception and secret transmission of any information while he was in private
11 browsing mode.

12 **AMENDED RESPONSE TO INTERROGATORY NO. 9:**

13 Plaintiff Byatt objects to Interrogatory No. 9 as not relevant to the claims and/or defenses
14 of this case to the extent it purports to suggest that review of and consent to Google’s Terms of
15 Service, or any terms of service, privacy policies, or other notices incorporated therein, is a
16 necessary predicate for any claim in this litigation and not proportional to the needs of this
17 litigation. Plaintiff Byatt’s allegations relate to Google’s conduct of secretly and unlawfully
18 intercepting, collecting, analyzing, and monetizing Plaintiff Byatt’s (and class members’)
19 browsing activity conducted in private browsing mode, despite Google’s representations that
20 Plaintiff Byatt’s (and class members’) browsing information would not be saved.

21 Notwithstanding and subject to these objections, Plaintiff Brown responds that “private
22 browsing” and “browse privately” are described in the Incognito splash screen he read each time
23 he began a private browsing session in Chrome—that his activity in private browsing mode might
24 still be visible to the websites he visits, his employer or school, or his internet service provider.
25 Google was not listed, and he did not consent to Google’s interception and collection of his private
26 browsing activity. Plaintiff Brown further states that, in addition to this description in the Incognito
27 splash screen, when he begins a private browsing session in Chrome the background turns dark,
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1 depicts a stealthy figure, and states that Chrome will not save his browsing history, cookies and
2 site data, and information entered into forms, reinforcing that any private browsing activity would
3 be concealed from and not subject to Google's interception and collection.

4 **INTERROGATORY NO. 10:**

5 Describe with particularity YOUR alleged awareness that YOU are able to sell YOUR
6 personal data, via other websites such as Killi (<https://killi.io/earn/>), *see* FAC ¶¶ 170, 175, 180,
7 185, 190, including by describing when YOU first became aware of this alleged fact, how YOU
8 became aware of this alleged fact, whether you contend that YOU could sell to Killi or other
9 entities the categories of "personal data" that YOU allege Google misappropriated, whether you
10 have ever attempted to sell such data (and if not, why not), and whether YOU contend that
11 Google's alleged conduct has affected YOUR alleged ability to sell YOUR personal data via other
12 websites such as Killi.

13 **RESPONSE TO INTERROGATORY NO. 10:**

14 Plaintiff Brown objects to Interrogatory No. 10 as not relevant to the claims and/or defenses
15 of this case to the extent it purports to suggest that Plaintiff Brown's sale of any personal data is a
16 necessary predicate for any claim in this litigation. Plaintiff Brown's allegations relate to Google's
17 conduct of secretly and unlawfully intercepting, collecting, analyzing, and monetizing Plaintiff
18 Brown's (and class members') browsing activity conducted in private browsing mode, despite
19 Google's representations that Plaintiff Brown's (and class members') browsing information would
20 not be saved. Google has, instead, taken this personal data without Plaintiff Brown's (and class
21 members') permission, which in turn helps Google enrich Google's profile of Plaintiff Brown (and
22 class members), which Google then uses for its own benefit and profit. Plaintiff Brown seeks,
23 among other things, non-restitutionary disgorgement of all of Google's profits that were derived,
24 in whole or in part, from Google's unlawful interception and subsequent use of Plaintiff Brown's
25 communications and personal data. Plaintiff Brown also objects that this interrogatory is
26 compound, asking in part about his awareness that he is able to sell personal data but then
27 separately including requests about the separate topics of 1) when he first became aware, 2) how
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1 he became aware, 3) whether he has ever attempted to sell his personal data, 4) if he has not
2 attempted to sell his personal data, why not, and 5) whether Google's unlawful interception of the
3 personal data has affected his ability to sell that personal data. This interrogatory therefore counts
4 as five separate interrogatories.

5 Notwithstanding and subject to these objections, Plaintiff Brown responds that he has been
6 aware of the value of his personal data for years, and he chose to browse privately to protect that
7 personal data from Google's and other tech companies' collection for their own benefit and profit.
8 Plaintiff Brown cannot recall specifically when he first learned of websites like Killi, but he knew
9 about companies like Brave and others that provide monetary compensation for personal data
10 before filing this lawsuit. To the best of Plaintiff Brown's recollection, he cannot recall attempting
11 to sell his personal data, but because Plaintiff Brown could sell his personal data to websites like
12 Killi and similar websites, the personal data that Google has unlawfully intercepted while Plaintiff
13 Brown was in private browsing mode has inherent value, and Google unlawfully collected that
14 personal data without providing compensation to Plaintiff Brown.
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VERIFICATION

Under penalties of perjury, I declare that I have read the foregoing Answers to Interrogatories, and that the Answers are true and correct to the best of my knowledge and belief.

By: _____

Printed Name: _____

Title: _____

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 2021, by _____, who has produced as identification _____, bearing number _____, expiring _____ and who did (did not) take an oath.

NOTARY PUBLIC SIGNATURE

Dated: June 1, 2021

MORGAN & MORGAN

/s/ John A. Yanchunis

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Attorneys for Plaintiffs

PROOF OF SERVICE

I, Jennifer Cabezas, declare:

I am a citizen of the United States and employed in the County of Hillsborough, Florida. I am over the age of 18 and not a party to the within action; my business address is 201 N. Franklin St., 7th Floor, Tampa, FL 33602.

On June 1, 2021, I served the following document described as:

Plaintiff's Amended Objections and Responses to Defendant's Second Set of Interrogatories

By electronic mail transmission from jcabezas@forthepeople.com on June 1, 2021, by transmitting a PDF format copy of such document to each person at the e-mail addresses listed below. The document was transmitted by electronic transmission and such transmission was reported as complete and without error:

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24 *Attorneys for Defendant*

25 Executed on June 1, 2021, at Tampa, Florida.

26
27 /s/ Jennifer Cabezas
28 Jennifer Cabezas

EXHIBIT 25

PLAINTIFF WILLIAM BYATT'S AMENDED OBJECTIONS AND RESPONSES TO DEFENDANT'S SECOND SET OF INTERROGATORIES

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

CHASOM BROWN, WILLIAM BYATT,
JEREMY DAVIS, CHRISTOPHER
CASTILLO, and MONIQUE TRUJILLO
individually and on behalf of all other
similarly situated,

Plaintiffs,

v.

GOOGLE LLC,

Defendant.

Case No. 5:20-cv-03664-LHK-SVK

**PLAINTIFF WILLIAM BYATT'S AMENDED OBJECTIONS AND RESPONSES
TO DEFENDANT'S SECOND SET OF INTERROGATORIES**

Pursuant to Federal Rules of Civil Procedure 26 and 33, Plaintiff William Byatt ("Byatt") hereby objects and responds to Defendant's, Google LLC ("Google"), Second Set of Interrogatories (Nos. 7–10). These objections and responses are made solely for the purpose of and in relation to this action. In addition, the objections and responses set forth in this document are based on Plaintiff Byatt's knowledge, investigations, and analysis to date. As discovery proceeds, Plaintiff Byatt may become aware of additional facts or evidence and his analysis of the case may change. Plaintiff Byatt reserves all rights to supplement and amend his objections and responses accordingly.

INTERROGATORY NO. 7:

Describe with particularity each specific "Google representation" that YOU allege led YOU to "believe[] that [YOUR] data would not be collected by Google and that Google would not intercept [YOUR] communications when [YOU] were in 'private browsing mode,'" see FAC ¶¶ 3, 149, including by stating whether YOU in fact reviewed each representation and, if so, when YOU first reviewed each representation, and whether YOU in fact relied upon each representation in using private browsing mode.

ORIGINAL RESPONSE TO INTERROGATORY NO. 7:

Plaintiff Byatt objects to Interrogatory No. 7 as not relevant to the claims and/or defenses of this case to the extent it purports to suggest that review of and consent to Google's Privacy Policy is a necessary predicate for any claim in this litigation and not proportional to the needs of this litigation. Plaintiff Byatt's allegations relate to Google's conduct of secretly and unlawfully intercepting, collecting, analyzing, and monetizing Plaintiff Byatt's (and class members') browsing activity conducted in private browsing mode, despite Google's representations that Plaintiff Byatt's (and class members') browsing information would not be saved.

Notwithstanding and subject to these objections, Plaintiff Byatt responds that he reviewed the Chrome Incognito Notice (i.e., the Incognito splash screen) and Google's representations contained therein each time he began a private browsing mode session in Chrome. Plaintiff Byatt further responds that, at or around the time he opened his Google Account and at times thereafter, he reviewed Google representations that he was in "control" of what information Google collects and could exercise such control by enabling private browsing mode, such as the representations outlined in paragraphs 2 and 42 of the First Amended Complaint. He understands this, along with the Chrome Incognito Notice (i.e., the Incognito splash screen that he reviewed each time he began a private browsing mode session in Chrome), to represent that Google would not intercept his communications when he was in private browsing mode. He does not recall the exact dates he reviewed these disclosures for the first time or thereafter. He likewise does not recall whether he reviewed any other disclosures.

AMENDED RESPONSE TO INTERROGATORY NO. 7:

Plaintiff Byatt objects to Interrogatory No. 7 as not relevant to the claims and/or defenses of this case to the extent it purports to suggest that review of and consent to Google's Terms of Service, or any terms of service, privacy policies, or other notices incorporated therein, is a necessary predicate for any claim in this litigation and not proportional to the needs of this litigation. Plaintiff Byatt's allegations relate to Google's conduct of secretly and unlawfully

1 intercepting, collecting, analyzing, and monetizing Plaintiff Byatt's (and class members')
2 browsing activity conducted in private browsing mode, despite Google's representations that
3 Plaintiff Byatt's (and class members') browsing information would not be saved.

4 Notwithstanding and subject to these objections, Plaintiff Byatt responds that, although he
5 cannot recall the exact details or dates of his review of the Terms of Service, which incorporate
6 the Google Chrome and Chrome OS Additional Terms of Service, the Chrome Privacy Notice, the
7 Privacy Policy, the "Search & Browse Privately" page, and the Incognito Screen—he recalls the
8 disclosures promising that Google would not intercept and collect his private browsing activity,
9 and he did not consent to that interception and collection. He also reviewed the Incognito splash
10 screen and Google's representations contained therein each time he began a private browsing mode
11 session in Chrome, which did not state that Google would intercept and collect his private browsing
12 activity.

13 **INTERROGATORY NO. 8:**

14 Describe with particularity each category of "personal and sensitive user data" that YOU
15 contend Google unlawfully "intercepted." *See* FAC ¶ 1.

16 **RESPONSE TO INTERROGATORY NO. 8:**

17 Plaintiff Byatt objects to Interrogatory No. 8. as overly broad, vague, and not proportional
18 to the needs of the litigation, considering this interrogatory requires the identification of each and
19 every instance when Google unlawfully intercepted Plaintiff Byatt's data in order to categorize
20 such data, rendering this Interrogatory No. 8 not possible to fully and accurately answer.

21 Notwithstanding and subject to these objections, Plaintiff Byatt responds that each and
22 every time that Plaintiff Byatt (and class members) used private browsing mode, Google
23 intercepted at least the following categories of personal and sensitive user data: 1) the "GET
24 request," which provides the content the user's browsing software asked the website to display
25 while in private browsing mode; 2) the unique internet protocol ("IP") address of the user's
26 connection to the internet while in private browsing mode; 3) information identifying the browser
27 software that the user is using, including any "fingerprint" data (such as user interactions with
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1 Google's special, unique fonts and pixels) that allow Google to further track and identify a
2 particular user, while in private browsing mode; 4) any "User-ID" the website issued to the user
3 while in private browsing mode, allowing Google to track and match the user across other websites
4 the user visits, whether in private browsing mode or not; 5) the geolocation of the user while in
5 private browsing mode; and 6) information contained in "Google cookies" from prior browsing
6 sessions which, at a minimum, contain the prior websites the user has viewed, and may also contain
7 usernames, login information, browsing activity (such as clicking buttons on websites), which in
8 turn helps Google enrich Google's profile on the user, which Google then uses for its own benefit
9 and profit.

10 **INTERROGATORY NO. 9:**

11 Describe with particularity YOUR understanding of the terms "private browsing" and
12 "browse privately" in the Google disclosures that YOU allege led YOU to "believe[] that [YOUR]
13 data would not be collected by Google and that Google would not intercept [YOUR]
14 communications when [YOU] were in 'private browsing mode,'" *see* FAC ¶ 3, including by stating
15 the basis for YOUR understanding and stating whether YOU believed using private browsing
16 would completely conceal YOUR internet browsing activity from everyone, or if not, identifying
17 the persons or entities which YOU understood would still be able to view YOUR internet browsing
18 activity when YOU were in private browsing mode.

19 **ORIGINAL RESPONSE TO INTERROGATORY NO. 9:**

20 Plaintiff Byatt objects to Interrogatory No. 9 as not relevant to the claims and/or defenses
21 of this case to the extent it purports to suggest that review of and consent to Google's Privacy
22 Policy is a necessary predicate for any claim in this litigation and not proportional to the needs of
23 this litigation. Plaintiff Byatt's allegations relate to Google's conduct of secretly and unlawfully
24 intercepting, collecting, analyzing, and monetizing Plaintiff Byatt's (and class members')
25 browsing activity conducted in private browsing mode, despite Google's representations that
26 Plaintiff Byatt's (and class members') browsing information would not be saved.
27
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1 Notwithstanding and subject to these objections, Plaintiff Byatt responds that he reviewed
2 the Chrome Incognito Notice (i.e., the Incognito splash screen) and Google’s representations
3 contained therein each time he began a private browsing mode session in Chrome. Plaintiff Byatt
4 further responds that, at or around the time he opened his Google Account and at times thereafter,
5 he reviewed Google representations that he was in “control” of what information Google collects
6 and could exercise such control by enabling private browsing mode, such as the representations
7 outlined in paragraphs 2 and 42 of the First Amended Complaint. He understands this, along with
8 the Chrome Incognito Notice (i.e., the Incognito splash screen that he reviewed each time he began
9 a private browsing mode session in Chrome), to represent that Google would not intercept his
10 communications when he was in private browsing mode. He does not recall whether he reviewed
11 any other disclosures. He further responds that he understood that certain information “might” still
12 be visible to the websites he visited, his employer or school if the browsing occurred on those
13 networks or computers, and his internet service provider, but he never consented to Google’s
14 concurrent interception and secret transmission of any information while he was in private
15 browsing mode.

16 **AMENDED RESPONSE TO INTERROGATORY NO. 9:**

17 Plaintiff Byatt objects to Interrogatory No. 9 as not relevant to the claims and/or defenses
18 of this case to the extent it purports to suggest that review of and consent to Google’s Terms of
19 Service, or any terms of service, privacy policies, or other notices incorporated therein, is a
20 necessary predicate for any claim in this litigation and not proportional to the needs of this
21 litigation. Plaintiff Byatt’s allegations relate to Google’s conduct of secretly and unlawfully
22 intercepting, collecting, analyzing, and monetizing Plaintiff Byatt’s (and class members’)
23 browsing activity conducted in private browsing mode, despite Google’s representations that
24 Plaintiff Byatt’s (and class members’) browsing information would not be saved.

25 Notwithstanding and subject to these objections, Plaintiff Byatt responds that “private
26 browsing” and “browse privately” are described in the Incognito splash screen he read each time
27 he began a private browsing session in Chrome—that his activity in private browsing mode might
28

1 still be visible to the websites he visits, his employer or school, or his internet service provider.
2 Google was not listed, and he did not consent to Google’s interception and collection of his private
3 browsing activity. Plaintiff Byatt further states that, in addition to this description in the Incognito
4 splash screen, when he begins a private browsing session in Chrome the background turns dark,
5 depicts a stealthy figure, and states that Chrome will not save his browsing history, cookies and
6 site data, and information entered into forms, reinforcing that any private browsing activity would
7 be concealed from and not subject to Google’s interception and collection. Plaintiff Byatt further
8 states that, in the Google Terms of Service, which incorporate the Google Chrome and Chrome
9 OS Additional Terms of Service, the Chrome Privacy Notice, the Privacy Policy, the “Search &
10 Browse Privately” page, and the Incognito Screen—he recalls the disclosures promising that
11 Google would not intercept and collect his private browsing activity.

12 **INTERROGATORY NO. 10:**

13 Describe with particularity YOUR alleged awareness that YOU are able to sell YOUR
14 personal data, via other websites such as Killi (<https://killi.io/earn/>), *see* FAC ¶¶ 170, 175, 180,
15 185, 190, including by describing when YOU first became aware of this alleged fact, how YOU
16 became aware of this alleged fact, whether you contend that YOU could sell to Killi or other
17 entities the categories of “personal data” that YOU allege Google misappropriated, whether you
18 have ever attempted to sell such data (and if not, why not), and whether YOU contend that
19 Google’s alleged conduct has affected YOUR alleged ability to sell YOUR personal data via other
20 websites such as Killi.

21 **RESPONSE TO INTERROGATORY NO. 10:**

22 Plaintiff Byatt objects to Interrogatory No. 10 as not relevant to the claims and/or defenses
23 of this case to the extent it purports to suggest that Plaintiff Byatt’s sale of any personal data is a
24 necessary predicate for any claim in this litigation. Plaintiff Byatt’s allegations relate to Google’s
25 conduct of secretly and unlawfully intercepting, collecting, analyzing, and monetizing Plaintiff
26 Byatt’s (and class members’) browsing activity conducted in private browsing mode, despite
27 Google’s representations that Plaintiff Byatt’s (and class members’) browsing information would
28

1 not be saved. Google has, instead, taken this personal data without Plaintiff Byatt's (and class
2 members') permission, which in turn helps Google enrich Google's profile of Plaintiff Byatt (and
3 class members), which Google then uses for its own benefit and profit. Plaintiff Byatt seeks, among
4 other things, non-restitutionary disgorgement of all of Google's profits that were derived, in whole
5 or in part, from Google's unlawful interception and subsequent use of Plaintiff Byatt's
6 communications and personal data. Plaintiff Byatt also objects that this interrogatory is compound,
7 asking in part about his awareness that he is able to sell personal data but then separately including
8 requests about the separate topics of 1) when he first became aware, 2) how he became aware, 3)
9 whether he has ever attempted to sell his personal data, 4) if he has not attempted to sell his
10 personal data, why not, and 5) whether Google's unlawful interception of the personal data has
11 affected his ability to sell that personal data. This interrogatory therefore counts as five separate
12 interrogatories.

13 Notwithstanding and subject to these objections, Plaintiff Byatt responds that he has been
14 aware of the value of his personal data for years, and he chose to browse privately to protect that
15 personal data from Google's and other tech companies' collection for their own benefit and profit.
16 Plaintiff Byatt cannot recall specifically when he first learned of websites like Killi, but he knew
17 about companies like Brave and others that provide monetary compensation for personal data
18 before filing this lawsuit. To the best of Plaintiff Byatt's recollection, he cannot recall attempting
19 to sell his personal data, but because Plaintiff Byatt could sell his personal data to websites like
20 Killi and similar websites, the personal data that Google has unlawfully intercepted while Plaintiff
21 Byatt was in private browsing mode has inherent value, and Google unlawfully collected that
22 personal data without providing compensation to Plaintiff Byatt.
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VERIFICATION

Under penalties of perjury, I declare that I have read the foregoing Answers to Interrogatories, and that the Answers are true and correct to the best of my knowledge and belief.

By: _____

Printed Name: _____

Title: _____

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 2021, by _____, who has produced as identification _____, bearing number _____, expiring _____ and who did (did not) take an oath.

NOTARY PUBLIC SIGNATURE

Dated: June 1, 2021

MORGAN & MORGAN

/s/ John A. Yanchunis

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PROOF OF SERVICE

I, Jennifer Cabezas, declare:

I am a citizen of the United States and employed in the County of Hillsborough, Florida. I am over the age of 18 and not a party to the within action; my business address is 201 N. Franklin St., 7th Floor, Tampa, FL 33602.

On June 1, 2021, I served the following document described as:

Plaintiff's Amended Objections and Responses to Defendant's Second Set of Interrogatories

By electronic mail transmission from jcabezas@forthepeople.com on June 1, 2021, by transmitting a PDF format copy of such document to each person at the e-mail addresses listed below. The document was transmitted by electronic transmission and such transmission was reported as complete and without error:

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24 *Attorneys for Defendant*

25 Executed on June 1, 2021, at Tampa, Florida.

26
27 /s/ Jennifer Cabezas
28 Jennifer Cabezas

EXHIBIT 26

PLAINTIFF CHRISTOPHER CASTILLO'S AMENDED OBJECTIONS AND RESPONSES TO DEFENDANT'S SECOND SET OF INTERROGATORIES

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

CHASOM BROWN, WILLIAM BYATT,
JEREMY DAVIS, CHRISTOPHER
CASTILLO, and MONIQUE TRUJILLO
individually and on behalf of all other
similarly situated,

Plaintiffs,

v.

GOOGLE LLC,

Defendant.

Case No. 5:20-cv-03664-LHK-SVK

**PLAINTIFF CHRISTOPHER CASTILLO’S AMENDED OBJECTIONS AND
RESPONSES TO DEFENDANT’S SECOND SET OF INTERROGATORIES**

Pursuant to Federal Rules of Civil Procedure 26 and 33, Plaintiff Christopher Castillo (“Castillo”) hereby objects and responds to Defendant’s, Google LLC (“Google”), Second Set of Interrogatories (Nos. 7–10). These objections and responses are made solely for the purpose of and in relation to this action. In addition, the objections and responses set forth in this document are based on Plaintiff Castillo’s knowledge, investigations, and analysis to date. As discovery proceeds, Plaintiff Castillo may become aware of additional facts or evidence and his analysis of the case may change. Plaintiff Castillo reserves all rights to supplement and amend his objections and responses accordingly.

INTERROGATORY NO. 7:

Describe with particularity each specific “Google representation” that YOU allege led YOU to “believe[] that [YOUR] data would not be collected by Google and that Google would not intercept [YOUR] communications when [YOU] were in ‘private browsing mode,’” see FAC ¶¶ 3, 149, including by stating whether YOU in fact reviewed each representation and, if so, when YOU first reviewed each representation, and whether YOU in fact relied upon each representation in using private browsing mode.

ORIGINAL RESPONSE TO INTERROGATORY NO. 7:

Plaintiff Castillo objects to Interrogatory No. 7 as not relevant to the claims and/or defenses of this case to the extent it purports to suggest that review of and consent to Google's Privacy Policy is a necessary predicate for any claim in this litigation and not proportional to the needs of this litigation. Plaintiff Castillo's allegations relate to Google's conduct of secretly and unlawfully intercepting, collecting, analyzing, and monetizing Plaintiff Castillo's (and class members') browsing activity conducted in private browsing mode, despite Google's representations that Plaintiff Castillo's (and class members') browsing information would not be saved.

Notwithstanding and subject to these objections, Plaintiff Castillo responds that he reviewed the Chrome Incognito Notice (i.e., the Incognito splash screen) and Google's representations contained therein each time he began a private browsing mode session in Chrome. Plaintiff Castillo further responds that, at or around the time he opened his Google Account and at times thereafter, he reviewed Google representations that he was in "control" of what information Google collects and could exercise such control by enabling private browsing mode, such as the representations outlined in paragraphs 2 and 42 of the First Amended Complaint. He understands this, along with the Chrome Incognito Notice (i.e., the Incognito splash screen that he reviewed each time he began a private browsing mode session in Chrome), to represent that Google would not intercept his communications when he was in private browsing mode. He does not recall the exact dates he reviewed these disclosures for the first time or thereafter. He likewise does not recall whether he reviewed any other disclosures.

AMENDED RESPONSE TO INTERROGATORY NO. 7:

Plaintiff Castillo objects to Interrogatory No. 7 as not relevant to the claims and/or defenses of this case to the extent it purports to suggest that review of and consent to Google's Terms of Service, or any terms of service, privacy policies, or other notices incorporated therein, is a necessary predicate for any claim in this litigation and not proportional to the needs of this litigation. Plaintiff Castillo's allegations relate to Google's conduct of secretly and unlawfully intercepting, collecting, analyzing, and monetizing Plaintiff Castillo's (and class members')

1 browsing activity conducted in private browsing mode, despite Google’s representations that
2 Plaintiff Castillo’s (and class members’) browsing information would not be saved.

3 Notwithstanding and subject to these objections, Plaintiff Castillo responds that, although
4 he cannot recall the exact details or dates of his review of the Terms of Service, which incorporate
5 the Google Chrome and Chrome OS Additional Terms of Service, the Chrome Privacy Notice, the
6 Privacy Policy, the “Search & Browse Privately” page, and the Incognito Screen—he recalls the
7 disclosures promising that Google would not intercept and collect his private browsing activity,
8 and he did not consent to that interception and collection. He also reviewed the Incognito splash
9 screen and Google’s representations contained therein each time he began a private browsing mode
10 session in Chrome, which did not state that Google would intercept and collect his private browsing
11 activity.

12 **INTERROGATORY NO. 8:**

13 Describe with particularity each category of “personal and sensitive user data” that YOU
14 contend Google unlawfully “intercepted.” *See* FAC ¶ 1.

15 **RESPONSE TO INTERROGATORY NO. 8:**

16 Plaintiff Castillo objects to Interrogatory No. 8. as overly broad, vague, and not
17 proportional to the needs of the litigation, considering this interrogatory requires the identification
18 of each and every instance when Google unlawfully intercepted Plaintiff Castillo’s data in order
19 to categorize such data, rendering this Interrogatory No. 8 not possible to fully and accurately
20 answer.

21 Notwithstanding and subject to these objections, Plaintiff Castillo responds that each and
22 every time that Plaintiff Castillo (and class members) used private browsing mode, Google
23 intercepted at least the following categories of personal and sensitive user data: 1) the “GET
24 request,” which provides the content the user’s browsing software asked the website to display
25 while in private browsing mode; 2) the unique internet protocol (“IP”) address of the user’s
26 connection to the internet while in private browsing mode; 3) information identifying the browser
27 software that the user is using, including any “fingerprint” data (such as user interactions with
28

1 Google's special, unique fonts and pixels) that allow Google to further track and identify a
2 particular user, while in private browsing mode; 4) any "User-ID" the website issued to the user
3 while in private browsing mode, allowing Google to track and match the user across other websites
4 the user visits, whether in private browsing mode or not; 5) the geolocation of the user while in
5 private browsing mode; and 6) information contained in "Google cookies" from prior browsing
6 sessions which, at a minimum, contain the prior websites the user has viewed, and may also contain
7 usernames, login information, browsing activity (such as clicking buttons on websites), which in
8 turn helps Google enrich Google's profile on the user, which Google then uses for its own benefit
9 and profit.

10 **INTERROGATORY NO. 9:**

11 Describe with particularity YOUR understanding of the terms "private browsing" and
12 "browse privately" in the Google disclosures that YOU allege led YOU to "believe[] that [YOUR]
13 data would not be collected by Google and that Google would not intercept [YOUR]
14 communications when [YOU] were in 'private browsing mode,'" *see* FAC ¶ 3, including by stating
15 the basis for YOUR understanding and stating whether YOU believed using private browsing
16 would completely conceal YOUR internet browsing activity from everyone, or if not, identifying
17 the persons or entities which YOU understood would still be able to view YOUR internet browsing
18 activity when YOU were in private browsing mode.

19 **ORIGINAL RESPONSE TO INTERROGATORY NO. 9:**

20 Plaintiff Castillo objects to Interrogatory No. 9 as not relevant to the claims and/or defenses
21 of this case to the extent it purports to suggest that review of and consent to Google's Privacy
22 Policy is a necessary predicate for any claim in this litigation and not proportional to the needs of
23 this litigation. Plaintiff Castillo's allegations relate to Google's conduct of secretly and unlawfully
24 intercepting, collecting, analyzing, and monetizing Plaintiff Castillo's (and class members')
25 browsing activity conducted in private browsing mode, despite Google's representations that
26 Plaintiff Castillo's (and class members') browsing information would not be saved.
27
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1 Notwithstanding and subject to these objections, Plaintiff Castillo responds that he
2 reviewed the Chrome Incognito Notice (i.e., the Incognito splash screen) and Google’s
3 representations contained therein each time he began a private browsing mode session in Chrome.
4 Plaintiff Castillo further responds that, at or around the time he opened his Google Account and at
5 times thereafter, he reviewed Google representations that he was in “control” of what information
6 Google collects and could exercise such control by enabling private browsing mode, such as the
7 representations outlined in paragraphs 2 and 42 of the First Amended Complaint. He understands
8 this, along with the Chrome Incognito Notice (i.e., the Incognito splash screen that he reviewed
9 each time he began a private browsing mode session in Chrome), to represent that Google would
10 not intercept his communications when he was in private browsing mode. He does not recall
11 whether he reviewed any other disclosures. He further responds that he understood that certain
12 information “might” still be visible to the websites he visited, his employer or school if the
13 browsing occurred on those networks or computers, and his internet service provider, but he never
14 consented to Google’s concurrent interception and secret transmission of any information while
15 he was in private browsing mode.

16 **AMENDED RESPONSE TO INTERROGATORY NO. 9:**

17 Plaintiff Castillo objects to Interrogatory No. 9 as not relevant to the claims and/or defenses
18 of this case to the extent it purports to suggest that review of and consent to Google’s Terms of
19 Service, or any terms of service, privacy policies, or other notices incorporated therein, is a
20 necessary predicate for any claim in this litigation and not proportional to the needs of this
21 litigation. Plaintiff Castillo’s allegations relate to Google’s conduct of secretly and unlawfully
22 intercepting, collecting, analyzing, and monetizing Plaintiff Castillo’s (and class members’)
23 browsing activity conducted in private browsing mode, despite Google’s representations that
24 Plaintiff Castillo’s (and class members’) browsing information would not be saved.

25 Notwithstanding and subject to these objections, Plaintiff Castillo responds that “private
26 browsing” and “browse privately” are described in the Incognito splash screen he read each time
27 he began a private browsing session in Chrome—that his activity in private browsing mode might
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1 still be visible to the websites he visits, his employer or school, or his internet service provider.
2 Google was not listed, and he did not consent to Google’s interception and collection of his private
3 browsing activity. Plaintiff Castillo further states that, in addition to this description in the
4 Incognito splash screen, when he begins a private browsing session in Chrome the background
5 turns dark, depicts a stealthy figure, and states that Chrome will not save his browsing history,
6 cookies and site data, and information entered into forms, reinforcing that any private browsing
7 activity would be concealed from and not subject to Google’s interception and collection. Plaintiff
8 Castillo further states that, in the Google Terms of Service, which incorporate the Google Chrome
9 and Chrome OS Additional Terms of Service, the Chrome Privacy Notice, the Privacy Policy, the
10 “Search & Browse Privately” page, and the Incognito Screen—he recalls the disclosures promising
11 that Google would not intercept and collect his private browsing activity.

12 **INTERROGATORY NO. 10:**

13 Describe with particularity YOUR alleged awareness that YOU are able to sell YOUR
14 personal data, via other websites such as Killi (<https://killi.io/earn/>), *see* FAC ¶¶ 170, 175, 180,
15 185, 190, including by describing when YOU first became aware of this alleged fact, how YOU
16 became aware of this alleged fact, whether you contend that YOU could sell to Killi or other
17 entities the categories of “personal data” that YOU allege Google misappropriated, whether you
18 have ever attempted to sell such data (and if not, why not), and whether YOU contend that
19 Google’s alleged conduct has affected YOUR alleged ability to sell YOUR personal data via other
20 websites such as Killi.

21 **RESPONSE TO INTERROGATORY NO. 10:**

22 Plaintiff Castillo objects to Interrogatory No. 10 as not relevant to the claims and/or
23 defenses of this case to the extent it purports to suggest that Plaintiff Castillo’s sale of any personal
24 data is a necessary predicate for any claim in this litigation. Plaintiff Castillo’s allegations relate
25 to Google’s conduct of secretly and unlawfully intercepting, collecting, analyzing, and monetizing
26 Plaintiff Castillo’s (and class members’) browsing activity conducted in private browsing mode,
27 despite Google’s representations that Plaintiff Castillo’s (and class members’) browsing
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1 information would not be saved. Google has, instead, taken this personal data without Plaintiff
2 Castillo's (and class members') permission, which in turn helps Google enrich Google's profile of
3 Plaintiff Castillo (and class members), which Google then uses for its own benefit and profit.
4 Plaintiff Castillo seeks, among other things, non-restitutionary disgorgement of all of Google's
5 profits that were derived, in whole or in part, from Google's unlawful interception and subsequent
6 use of Plaintiff Castillo's communications and personal data. Plaintiff Castillo also objects that
7 this interrogatory is compound, asking in part about his awareness that he is able to sell personal
8 data but then separately including requests about the separate topics of 1) when he first became
9 aware, 2) how he became aware, 3) whether he has ever attempted to sell his personal data, 4) if
10 he has not attempted to sell his personal data, why not, and 5) whether Google's unlawful
11 interception of the personal data has affected his ability to sell that personal data. This interrogatory
12 therefore counts as five separate interrogatories.

13 Notwithstanding and subject to these objections, Plaintiff Castillo responds that he has been
14 aware of the value of his personal data for years, and he chose to browse privately to protect that
15 personal data from Google's and other tech companies' collection for their own benefit and profit.
16 Plaintiff Castillo cannot recall specifically when he first learned of websites like Killi, but he knew
17 about companies like Brave and others that provide monetary compensation for personal data
18 before filing this lawsuit. To the best of Plaintiff Castillo's recollection, he cannot recall attempting
19 to sell his personal data, but because Plaintiff Castillo could sell his personal data to websites like
20 Killi and similar websites, the personal data that Google has unlawfully intercepted while Plaintiff
21 Castillo was in private browsing mode has inherent value, and Google unlawfully collected that
22 personal data without providing compensation to Plaintiff Castillo.
23
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VERIFICATION

Under penalties of perjury, I declare that I have read the foregoing Answers to Interrogatories, and that the Answers are true and correct to the best of my knowledge and belief.

By: _____

Printed Name: _____

Title: _____

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 2021, by _____, who has produced as identification _____, bearing number _____, expiring _____ and who did (did not) take an oath.

NOTARY PUBLIC SIGNATURE

Dated: June 1, 2021

MORGAN & MORGAN

/s/ John A. Yanchunis

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Attorneys for Plaintiffs

PROOF OF SERVICE

I, Jennifer Cabezas, declare:

I am a citizen of the United States and employed in the County of Hillsborough, Florida. I am over the age of 18 and not a party to the within action; my business address is 201 N. Franklin St., 7th Floor, Tampa, FL 33602.

On June 1, 2021, I served the following document described as:

Plaintiff's Amended Objections and Responses to Defendant's Second Set of Interrogatories

By electronic mail transmission from jcabezas@forthepeople.com on June 1, 2021, by transmitting a PDF format copy of such document to each person at the e-mail addresses listed below. The document was transmitted by electronic transmission and such transmission was reported as complete and without error:

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24 *Attorneys for Defendant*

25 Executed on June 1, 2021, at Tampa, Florida.

26 /s/ Jennifer Cabezas
27 Jennifer Cabezas
28

EXHIBIT 27

PLAINTIFF JEREMY DAVIS' AMENDED OBJECTIONS AND RESPONSES TO DEFENDANT'S SECOND SET OF INTERROGATORIES

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

CHASOM BROWN, WILLIAM BYATT,
JEREMY DAVIS, CHRISTOPHER
CASTILLO, and MONIQUE TRUJILLO
individually and on behalf of all other
similarly situated,

Plaintiffs,

v.

GOOGLE LLC,

Defendant.

Case No. 5:20-cv-03664-LHK-SVK

**PLAINTIFF JEREMY DAVIS' AMENDED OBJECTIONS AND RESPONSES
TO DEFENDANT'S SECOND SET OF INTERROGATORIES**

Pursuant to Federal Rules of Civil Procedure 26 and 33, Plaintiff Jeremy Davis ("Davis") hereby objects and responds to Defendant's, Google LLC ("Google"), Second Set of Interrogatories (Nos. 7–10). These objections and responses are made solely for the purpose of and in relation to this action. In addition, the objections and responses set forth in this document are based on Plaintiff Davis' knowledge, investigations, and analysis to date. As discovery proceeds, Plaintiff Davis may become aware of additional facts or evidence and his analysis of the case may change. Plaintiff Davis reserves all rights to supplement and amend his objections and responses accordingly.

INTERROGATORY NO. 7:

Describe with particularity each specific "Google representation" that YOU allege led YOU to "believe[] that [YOUR] data would not be collected by Google and that Google would not intercept [YOUR] communications when [YOU] were in 'private browsing mode,'" see FAC ¶¶ 3, 149, including by stating whether YOU in fact reviewed each representation and, if so, when YOU first reviewed each representation, and whether YOU in fact relied upon each representation in using private browsing mode.

ORIGINAL RESPONSE TO INTERROGATORY NO. 7:

Plaintiff Davis objects to Interrogatory No. 7 as not relevant to the claims and/or defenses of this case to the extent it purports to suggest that review of and consent to Google's Privacy Policy is a necessary predicate for any claim in this litigation and not proportional to the needs of this litigation. Plaintiff Davis' allegations relate to Google's conduct of secretly and unlawfully intercepting, collecting, analyzing, and monetizing Plaintiff Davis' (and class members') browsing activity conducted in private browsing mode, despite Google's representations that Plaintiff Davis' (and class members') browsing information would not be saved.

Notwithstanding and subject to these objections, Plaintiff Davis responds that he reviewed the Chrome Incognito Notice (i.e., the Incognito splash screen) and Google's representations contained therein each time he began a private browsing mode session in Chrome. Plaintiff Davis further responds that, at or around the time he opened his Google Account and at times thereafter, he reviewed Google representations that he was in "control" of what information Google collects and could exercise such control by enabling private browsing mode, such as the representations outlined in paragraphs 2 and 42 of the First Amended Complaint. He understands this, along with the Chrome Incognito Notice (i.e., the Incognito splash screen that he reviewed each time he began a private browsing mode session in Chrome), to represent that Google would not intercept his communications when he was in private browsing mode. He does not recall the exact dates he reviewed these disclosures for the first time or thereafter. He likewise does not recall whether he reviewed any other disclosures.

AMENDED RESPONSE TO INTERROGATORY NO. 7:

Plaintiff Davis objects to Interrogatory No. 7 as not relevant to the claims and/or defenses of this case to the extent it purports to suggest that review of and consent to Google's Terms of Service, or any terms of service, privacy policies, or other notices incorporated therein, is a necessary predicate for any claim in this litigation and not proportional to the needs of this litigation. Plaintiff Davis' allegations relate to Google's conduct of secretly and unlawfully

1 intercepting, collecting, analyzing, and monetizing Plaintiff Davis' (and class members') browsing
2 activity conducted in private browsing mode, despite Google's representations that Plaintiff Davis'
3 (and class members') browsing information would not be saved.

4 Notwithstanding and subject to these objections, Plaintiff Davis responds that, although he
5 cannot recall the exact details or dates of his review of the Terms of Service, which incorporate
6 the Google Chrome and Chrome OS Additional Terms of Service, the Chrome Privacy Notice, the
7 Privacy Policy, the "Search & Browse Privately" page, and the Incognito Screen—he recalls the
8 disclosures promising that Google would not intercept and collect his private browsing activity,
9 and he did not consent to that interception and collection. He also reviewed the Incognito splash
10 screen and Google's representations contained therein each time he began a private browsing mode
11 session in Chrome, which did not state that Google would intercept and collect his private browsing
12 activity.

13 **INTERROGATORY NO. 8:**

14 Describe with particularity each category of "personal and sensitive user data" that YOU
15 contend Google unlawfully "intercepted." *See* FAC ¶ 1.

16 **RESPONSE TO INTERROGATORY NO. 8:**

17 Plaintiff Davis objects to Interrogatory No. 8. as overly broad, vague, and not proportional
18 to the needs of the litigation, considering this interrogatory requires the identification of each and
19 every instance when Google unlawfully intercepted Plaintiff Davis' data in order to categorize
20 such data, rendering this Interrogatory No. 8 not possible to fully and accurately answer.

21 Notwithstanding and subject to these objections, Plaintiff Davis responds that each and
22 every time that Plaintiff Davis (and class members) used private browsing mode, Google
23 intercepted at least the following categories of personal and sensitive user data: 1) the "GET
24 request," which provides the content the user's browsing software asked the website to display
25 while in private browsing mode; 2) the unique internet protocol ("IP") address of the user's
26 connection to the internet while in private browsing mode; 3) information identifying the browser
27 software that the user is using, including any "fingerprint" data (such as user interactions with
28

1 Google's special, unique fonts and pixels) that allow Google to further track and identify a
2 particular user, while in private browsing mode; 4) any "User-ID" the website issued to the user
3 while in private browsing mode, allowing Google to track and match the user across other websites
4 the user visits, whether in private browsing mode or not; 5) the geolocation of the user while in
5 private browsing mode; and 6) information contained in "Google cookies" from prior browsing
6 sessions which, at a minimum, contain the prior websites the user has viewed, and may also contain
7 usernames, login information, browsing activity (such as clicking buttons on websites), which in
8 turn helps Google enrich Google's profile on the user, which Google then uses for its own benefit
9 and profit.

10 **INTERROGATORY NO. 9:**

11 Describe with particularity YOUR understanding of the terms "private browsing" and
12 "browse privately" in the Google disclosures that YOU allege led YOU to "believe[] that [YOUR]
13 data would not be collected by Google and that Google would not intercept [YOUR]
14 communications when [YOU] were in 'private browsing mode,'" *see* FAC ¶ 3, including by stating
15 the basis for YOUR understanding and stating whether YOU believed using private browsing
16 would completely conceal YOUR internet browsing activity from everyone, or if not, identifying
17 the persons or entities which YOU understood would still be able to view YOUR internet browsing
18 activity when YOU were in private browsing mode.

19 **ORIGINAL RESPONSE TO INTERROGATORY NO. 9:**

20 Plaintiff Davis objects to Interrogatory No. 9 as not relevant to the claims and/or defenses
21 of this case to the extent it purports to suggest that review of and consent to Google's Privacy
22 Policy is a necessary predicate for any claim in this litigation and not proportional to the needs of
23 this litigation. Plaintiff Davis' allegations relate to Google's conduct of secretly and unlawfully
24 intercepting, collecting, analyzing, and monetizing Plaintiff Davis' (and class members') browsing
25 activity conducted in private browsing mode, despite Google's representations that Plaintiff Davis'
26 (and class members') browsing information would not be saved.
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1 Notwithstanding and subject to these objections, Plaintiff Davis responds that he reviewed
2 the Chrome Incognito Notice (i.e., the Incognito splash screen) and Google’s representations
3 contained therein each time he began a private browsing mode session in Chrome. Plaintiff Davis
4 further responds that, at or around the time he opened his Google Account and at times thereafter,
5 he reviewed Google representations that he was in “control” of what information Google collects
6 and could exercise such control by enabling private browsing mode, such as the representations
7 outlined in paragraphs 2 and 42 of the First Amended Complaint. He understands this, along with
8 the Chrome Incognito Notice (i.e., the Incognito splash screen that he reviewed each time he began
9 a private browsing mode session in Chrome), to represent that Google would not intercept his
10 communications when he was in private browsing mode. He does not recall whether he reviewed
11 any other disclosures. He further responds that he understood that certain information “might” still
12 be visible to the websites he visited, his employer or school if the browsing occurred on those
13 networks or computers, and his internet service provider, but he never consented to Google’s
14 concurrent interception and secret transmission of any information while he was in private
15 browsing mode.

16 **AMENDED RESPONSE TO INTERROGATORY NO. 9:**

17 Plaintiff Davis objects to Interrogatory No. 9 as not relevant to the claims and/or defenses
18 of this case to the extent it purports to suggest that review of and consent to Google’s Terms of
19 Service, or any terms of service, privacy policies, or other notices incorporated therein, is a
20 necessary predicate for any claim in this litigation and not proportional to the needs of this
21 litigation. Plaintiff Davis’ allegations relate to Google’s conduct of secretly and unlawfully
22 intercepting, collecting, analyzing, and monetizing Plaintiff Davis’ (and class members’) browsing
23 activity conducted in private browsing mode, despite Google’s representations that Plaintiff Davis’
24 (and class members’) browsing information would not be saved.

25 Notwithstanding and subject to these objections, Plaintiff Davis responds that “private
26 browsing” and “browse privately” are described in the Incognito splash screen he read each time
27 he began a private browsing session in Chrome—that his activity in private browsing mode might
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1 still be visible to the websites he visits, his employer or school, or his internet service provider.
2 Google was not listed, and he did not consent to Google’s interception and collection of his private
3 browsing activity. Plaintiff Davis further states that, in addition to this description in the Incognito
4 splash screen, when he begins a private browsing session in Chrome, which he changed to be the
5 default when Chrome is launched, the background turns dark, depicts a stealthy figure, and states
6 that Chrome will not save his browsing history, cookies and site data, and information entered into
7 forms, reinforcing that any private browsing activity would be concealed from and not subject to
8 Google’s interception and collection. Plaintiff Davis further states that, in the Google Terms of
9 Service, which incorporate the Google Chrome and Chrome OS Additional Terms of Service, the
10 Chrome Privacy Notice, the Privacy Policy, the “Search & Browse Privately” page, and the
11 Incognito Screen—he recalls the disclosures promising that Google would not intercept and collect
12 his private browsing activity.

13 **INTERROGATORY NO. 10:**

14 Describe with particularity YOUR alleged awareness that YOU are able to sell YOUR
15 personal data, via other websites such as Killi (<https://killi.io/earn/>), *see* FAC ¶¶ 170, 175, 180,
16 185, 190, including by describing when YOU first became aware of this alleged fact, how YOU
17 became aware of this alleged fact, whether you contend that YOU could sell to Killi or other
18 entities the categories of “personal data” that YOU allege Google misappropriated, whether you
19 have ever attempted to sell such data (and if not, why not), and whether YOU contend that
20 Google’s alleged conduct has affected YOUR alleged ability to sell YOUR personal data via other
21 websites such as Killi.

22 **RESPONSE TO INTERROGATORY NO. 10:**

23 Plaintiff Davis objects to Interrogatory No. 10 as not relevant to the claims and/or defenses
24 of this case to the extent it purports to suggest that Plaintiff Davis’ sale of any personal data is a
25 necessary predicate for any claim in this litigation. Plaintiff Davis’ allegations relate to Google’s
26 conduct of secretly and unlawfully intercepting, collecting, analyzing, and monetizing Plaintiff
27 Davis’ (and class members’) browsing activity conducted in private browsing mode, despite
28

1 Google's representations that Plaintiff Davis' (and class members') browsing information would
2 not be saved. Google has, instead, taken this personal data without Plaintiff Davis' (and class
3 members') permission, which in turn helps Google enrich Google's profile of Plaintiff Davis (and
4 class members), which Google then uses for its own benefit and profit. Plaintiff Davis seeks,
5 among other things, non-restitutionary disgorgement of all of Google's profits that were derived,
6 in whole or in part, from Google's unlawful interception and subsequent use of Plaintiff Davis'
7 communications and personal data. Plaintiff Davis also objects that this interrogatory is compound,
8 asking in part about his awareness that he is able to sell personal data but then separately including
9 requests about the separate topics of 1) when he first became aware, 2) how he became aware, 3)
10 whether he has ever attempted to sell his personal data, 4) if he has not attempted to sell his
11 personal data, why not, and 5) whether Google's unlawful interception of the personal data has
12 affected his ability to sell that personal data. This interrogatory therefore counts as five separate
13 interrogatories.

14 Notwithstanding and subject to these objections, Plaintiff Davis responds that he has been
15 aware of the value of his personal data for years, and he chose to browse privately to protect that
16 personal data from Google's and other tech companies' collection for their own benefit and profit.
17 Plaintiff Davis cannot recall specifically when he first learned of websites like Killi, but he knew
18 about companies like Brave and others that provide monetary compensation for personal data
19 before filing this lawsuit. To the best of Plaintiff Davis' recollection, he cannot recall attempting
20 to sell his personal data, but because Plaintiff Davis could sell his personal data to websites like
21 Killi and similar websites, the personal data that Google has unlawfully intercepted while Plaintiff
22 Davis was in private browsing mode has inherent value, and Google unlawfully collected that
23 personal data without providing compensation to Plaintiff Davis.
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VERIFICATION

Under penalties of perjury, I declare that I have read the foregoing Answers to Interrogatories, and that the Answers are true and correct to the best of my knowledge and belief.

By: _____

Printed Name: _____

Title: _____

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 2021, by _____, who has produced as identification _____, bearing number _____, expiring _____ and who did (did not) take an oath.

NOTARY PUBLIC SIGNATURE

Dated: June 1, 2021

MORGAN & MORGAN

/s/ John A. Yanchunis

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Attorneys for Plaintiffs

PROOF OF SERVICE

I, Jennifer Cabezas, declare:

I am a citizen of the United States and employed in the County of Hillsborough, Florida. I am over the age of 18 and not a party to the within action; my business address is 201 N. Franklin St., 7th Floor, Tampa, FL 33602.

On June 1, 2021, I served the following document described as:

Plaintiff's Amended Objections and Responses to Defendant's Second Set of Interrogatories

By electronic mail transmission from jcabezas@forthepeople.com on June 1, 2021, by transmitting a PDF format copy of such document to each person at the e-mail addresses listed below. The document was transmitted by electronic transmission and such transmission was reported as complete and without error:

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25 Executed on June 1, 2021, at Tampa, Florida.

26
27 /s/ Jennifer Cabezas
28 Jennifer Cabezas

EXHIBIT 28

PLAINTIFF MONIQUE TRUJILLO'S OBJECTIONS AND RESPONSES TO DEFENDANT'S FIRST AND SECOND SETS OF INTERROGATORIES

**Redacted Version of
Document Sought to be
Sealed**

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

CHASOM BROWN, WILLIAM BYATT,
JEREMY DAVIS, CHRISTOPHER
CASTILLO, and MONIQUE TRUJILLO
individually and on behalf of all other
similarly situated,

Plaintiffs,

v.

GOOGLE LLC,

Defendant.

Case No. 5:20-cv-03664-LHK-SVK

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**PLAINTIFF MONIQUE TRUJILLO'S OBJECTIONS AND RESPONSES
TO DEFENDANT'S FIRST AND SECOND SETS OF INTERROGATORIES**

Pursuant to Federal Rules of Civil Procedure 26 and 33, Plaintiff Monique Trujillo ("Trujillo") hereby objects and responds to Defendant's, Google LLC ("Google"), First and Second Sets of Interrogatories (Nos. 1–10). These objections and responses are made solely for the purpose of and in relation to this action. In addition, the objections and responses set forth in this document are based on Plaintiff Trujillo's knowledge, investigations, and analysis to date. As discovery proceeds, Plaintiff Trujillo may become aware of additional facts or evidence and her analysis of the case may change. Plaintiff Trujillo reserves all rights to supplement and amend her objections and responses accordingly.

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INTERROGATORY NO. 1:

Describe with particularity each time YOU reviewed the GOOGLE TERMS OF SERVICE, GOOGLE PRIVACY POLICY, MY GOOGLE ACTIVITY, CHROME INCOGNITO NOTICE, CHROME TERMS OF SERVICE, and/or CHROME PRIVACY NOTICE prior to the filing of the COMPLAINT and, if YOU reviewed such documents, on what date(s) and which version(s) YOU reviewed, and whether YOU reviewed the entire document(s) or only portion(s) of the document(s) (if only portion(s), describe with particularity which portion(s) you reviewed).

RESPONSE TO INTERROGATORY NO. 1:

Plaintiff Trujillo objects to Interrogatory No. 1 to the extent it purports to suggest that review of and consent to Google's Privacy Policy is a necessary predicate for any claim in this litigation and not proportional to the needs of this litigation. Plaintiff Trujillo's allegations relate to Google's conduct of secretly and unlawfully intercepting, collecting, analyzing, and monetizing Plaintiff Trujillo's (and class members') browsing activity conducted in private browsing mode, despite Google's representations that Plaintiff Trujillo's (and class members') browsing information would not be saved.

Notwithstanding and subject to these objections, Plaintiff Trujillo responds that she reviewed the Incognito splash screen and Google's representations contained therein each time she began a private browsing mode session in Chrome. Plaintiff Trujillo further responds that, at or around the time she opened her Google Account, which was in approximately [REDACTED], and at times thereafter, she reviewed Google representations that she was in "control" of what information Google collects, and to the best of her ability recalls reviewing a Google page six or seven years ago describing private browsing that represented she was in "control" of what information Google collects and that she could exercise such control by enabling private browsing mode. She does not recall the exact dates she reviewed these disclosures, but believes it was six or seven years ago, and she reviewed the Incognito splash screen each time she began a private browsing mode session in Chrome.

INTERROGATORY NO. 2:

Describe with particularity YOUR use of CHROME, including: the date YOU first began using CHROME on each device (e.g., mobile devices, tablets, laptops, and/or desktops); the frequency with which YOU used CHROME on each device; which browser modes YOU used in CHROME on each device; whether you logged into a Google account when you used CHROME on each device; which Google account(s) YOU logged into when YOU used CHROME on each device; which website(s) YOU visited while using CHROME on each device; whether you ever

1 reviewed or deleted data on MY GOOGLE ACTIVITY; and how often YOU enabled CHROME
2 INCOGNITO MODE while logged out of your Google account.

3 **RESPONSE TO INTERROGATORY NO. 2:**

4 Plaintiff Trujillo objects to Interrogatory No. 2 as overly broad, vague, and not proportional
5 to the needs of the litigation, considering Google requests each and every instance when Plaintiff
6 Trujillo used Chrome, the Google accounts logged into for each instance of using Chrome, each
7 website visited with Chrome, and other disproportional details, rendering this Interrogatory No. 2
8 not possible to fully and accurately answer. Plaintiff Trujillo also objects that this interrogatory is
9 compound, asking in part about her use of Chrome but then separately including a request
10 regarding the separate topic of whether she “reviewed or deleted data on MY GOOGLE
11 ACTIVITY.” This interrogatory therefore counts as two separate interrogatories.

12 Notwithstanding and subject to these objections, Plaintiff Trujillo responds that she has
13 used Chrome on her computers for at least the past decade. Since [REDACTED], Plaintiff Trujillo used
14 Chrome on her computers and phones, including Incognito private browsing mode, which she uses
15 at least a few times per month. During the Class Period, Plaintiff Trujillo uses private browsing
16 mode on both her computers and phones to [REDACTED],
17 [REDACTED] To the best of
18 Plaintiff Trujillo’s knowledge, she has never logged into any Google accounts in Chrome when
19 using Chrome’s private browsing mode, but may have logged into her Google account,
20 [REDACTED] when using Chrome in its non-private browsing mode. To the best of
21 Plaintiff Trujillo’s knowledge, Plaintiff Trujillo has not reviewed or deleted her My Google
22 Activity.

23 However, Plaintiff Trujillo does not know and has not been told all the ways that Google
24 is tracking her during her private browsing sessions. Further, she does not know by “logging into
25 Google,” whether Google is including other processes and apps that may be running, Google-
26 branded or Google-supported. She may further supplement this response if she is provided more
27 information about how Google is tracking people in private browsing in undisclosed ways. For
28

1 now, she is only talking about what is going on during private browsing, on the browser application
2 itself, based on what she can actually observe in the ordinary course of her browsing.

3 **INTERROGATORY NO. 3:**

4 Describe with particularity how YOU have been harmed or damaged by DEFENDANT's
5 conduct alleged in YOUR COMPLAINT.

6 **RESPONSE TO INTERROGATORY NO. 3:**

7 Plaintiff Trujillo objects to Interrogatory No. 3 as discovery has not closed and Plaintiff
8 Trujillo does not know the full extent of Defendant's misrepresentations and deceptive conduct in
9 collecting, gathering, analyzing, and monetizing Plaintiff Trujillo's private browsing activity, and
10 Plaintiff Trujillo reserves her right to amend this interrogatory as the case proceeds.

11 Notwithstanding and subject to these objections, Plaintiff Trujillo responds that her privacy
12 is very important to her and Plaintiff Trujillo takes careful precautions to protect her privacy. When
13 Plaintiff Trujillo engaged in the private browsing mode in Google's Chrome browser, Plaintiff
14 Trujillo read Google's representations that Plaintiff Trujillo's browsing activity would not be
15 collected and that she could browse the web privately. Based on Google's representations, Plaintiff
16 Trujillo reasonably believed that she could control the information that would be shared with
17 Google. Plaintiff Trujillo considered this browsing activity private and confidential, and did not
18 intend to share it with Google. Plaintiff Trujillo never consented to Google's interception of her
19 private browsing communications, Google's collection of any data from her private browsing, or
20 Google's use of any data from her private browsing. Plaintiff Trujillo chose the private browsing
21 mode to avoid Google's collection of that browsing activity and to browse the web without Google
22 spying on and gathering that browsing activity for its own monetary gain. Without Plaintiff
23 Trujillo's knowledge, Google continued to monitor and collect her browsing activity and used that
24 browsing activity for its own monetary gain. Plaintiff Trujillo is familiar with other web browsers
25 that pay users a fee for their browsing.

26 **INTERROGATORY NO. 4:**

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1 Without limitation as to time period, describe with particularity all websites, applications,
2 or other online services with which YOU voluntarily shared any DATA AT ISSUE.

3 **RESPONSE TO INTERROGATORY NO. 4:**

4 Plaintiff Trujillo objects to Interrogatory No. 4 as overly broad, vague, and not proportional
5 to the needs of the litigation, considering Google requests each and every instance when Plaintiff
6 Trujillo may have shared “data” with a website, application, or other online service, regardless of
7 any time limitation, rendering this Interrogatory No. 4 not possible to fully and accurately answer.
8 In addition, to the extent this request seeks information regarding “data” shared when private
9 browsing mode was not enabled, it is irrelevant.

10 Notwithstanding and subject to these objections, Plaintiff Trujillo states that, to the extent
11 she can recall, during the Class Period the websites visited most, regardless of whether she was
12 browsing in private browsing mode or not, include: [REDACTED]

13 [REDACTED]
14 [REDACTED]
15 [REDACTED]

16 [REDACTED] Plaintiff Trujillo further states that, to the extent she can recall,
17 during the Class Period the applications she most used include: [REDACTED];
18 [REDACTED]

19 **INTERROGATORY NO. 5:**

20 Describe with particularity each time YOU used private browsing mode, including
21 separately identifying for each time the following: the browser, the private browsing mode, the
22 date and time, the device, the websites visited, how long each private browsing session lasted and
23 YOUR location.

24 **RESPONSE TO INTERROGATORY NO. 5:**

25 Plaintiff Trujillo objects to Interrogatory No. 5 as overly broad, vague, and not proportional
26 to the needs of the litigation, insofar as Google may be requesting particular details of dates, times,
27 devices, websites visited, the duration of those visits, and Plaintiff Trujillo’s location while
28 engaged in these activities. Further, Plaintiff Trujillo chooses the private browsing mode because

1 she does not want this activity tracked, recorded, or otherwise memorialized and, therefore,
2 requiring Plaintiff Trujillo to recall the details sufficient to respond to Interrogatory No. 5 would
3 be unreasonable and not proportional to the needs of the litigation. Further, according to Google's
4 Motion to Dismiss, Google, unlike Plaintiff Trujillo, collects most if not all of the information
5 requested. Accordingly, Google is in the best position to answer this Interrogatory since it is
6 already in possession of this information.

7 Notwithstanding and subject to these objections, Plaintiff Trujillo responds that she used
8 private browsing mode with the specific purpose of that activity not being tracked, recorded, or
9 otherwise memorialized and, therefore, Plaintiff Trujillo cannot recall the particular details of each
10 and every time she engaged in private browsing mode. Plaintiff Trujillo used Chrome's and
11 Safari's private browsing modes [REDACTED]
12 [REDACTED]

13 [REDACTED] This private browsing activity was done in both Chrome and Safari, but the
14 majority of the private browsing activity was done in Chrome Incognito mode. The overwhelming
15 majority of Plaintiff Trujillo's private browsing activity was done in [REDACTED]
16

17 **INTERROGATORY NO. 6:**

18 Describe with particularity YOUR use of all non-CHROME private browsing modes,
19 including: what non-CHROME private browsing modes YOU used, the time periods in which
20 YOU used each of the non-CHROME private browsing modes YOU identified, and, if any, what
21 disclosures from publishers of the non-CHROME browsers you reviewed or relied on during the
22 time periods YOU identified.

23 **RESPONSE TO INTERROGATORY NO. 6:**

24 Plaintiff Trujillo objects to Interrogatory No. 6 as overly broad, vague, and not proportional
25 to the needs of the litigation, to the extent, like with Interrogatory No. 5, Google requests particular
26 details of dates, times, devices, websites visited, the duration of those visits, and Plaintiff Trujillo's
27 location while engaged in these activities. Further, Plaintiff Trujillo chooses the private browsing
28 mode because she does not want this activity tracked, recorded, or otherwise memorialized and,

1 therefore, requiring Plaintiff Trujillo to recall the details sufficient to respond to Interrogatory No.
2 6 would be unreasonable and not proportional to the needs of the litigation. Further, according to
3 Google's Motion to Dismiss, Google, unlike Plaintiff Trujillo, collects most if not all of the
4 information requested. Accordingly, Google is in the best position to answer this Interrogatory
5 since it is already in possession of this information. Finally, Plaintiff Trujillo objects to the term
6 "publishers of non-Chrome browsers" because this term is meaningless. Plaintiff Trujillo does not
7 understand the distinction Google appears to be making between websites on a Chrome browser
8 and websites on a non-Chrome browser.

9
10 Notwithstanding and subject to these objections, Plaintiff Trujillo recalls that some of her
11 private browsing activity for the last six or seven years was done in Safari, but the majority of her
12 private browsing activity was in Chrome Incognito mode. Aside from rejecting cookie permissions
13 when possible, Plaintiff Trujillo recalls seeing a private browsing mode screen in Safari that
14 represents the browsing history will not be saved.

15 **INTERROGATORY NO. 7:**

16 Describe with particularity each specific "Google representation" that YOU allege led
17 YOU to "believe[] that [YOUR] data would not be collected by Google and that Google would
18 not intercept [YOUR] communications when [YOU] were in 'private browsing mode,'" see SAC
19 ¶¶ 3, 149, including by stating whether YOU in fact reviewed each representation and, if so, when
20 YOU first reviewed each representation, and whether YOU in fact relied upon each representation
21 in using private browsing mode.

22 **RESPONSE TO INTERROGATORY NO. 7:**

23 Plaintiff Trujillo objects to Interrogatory No. 7 as not relevant to the claims and/or defenses
24 of this case to the extent it purports to suggest that review of and consent to Google's Terms of
25 Service, or any terms of service, privacy policies, or other notices incorporated therein, is a
26 necessary predicate for any claim in this litigation and not proportional to the needs of this
27 litigation. Plaintiff Trujillo's allegations relate to Google's conduct of secretly and unlawfully
28 intercepting, collecting, analyzing, and monetizing Plaintiff Trujillo's (and class members')

1 browsing activity conducted in private browsing mode, despite Google’s representations that
2 Plaintiff Trujillo’s (and class members’) browsing information would not be saved.

3 Notwithstanding and subject to these objections, Plaintiff Trujillo responds that, although
4 she is not sure whether she reviewed the Google Terms of Service, which incorporate the Google
5 Chrome and Chrome OS Additional Terms of Service, the Chrome Privacy Notice, the Privacy
6 Policy, the “Search & Browse Privately” page, and the Incognito Screen—she did review the
7 Incognito splash screen and Google’s representations contained therein each time she began a
8 private browsing mode session in Chrome, which did not state that Google would intercept and
9 collect her private browsing activity.

10 **INTERROGATORY NO. 8:**

11 Describe with particularity each category of “personal and sensitive user data” that YOU
12 contend Google unlawfully “intercepted.” *See* SAC ¶ 1.

13 **RESPONSE TO INTERROGATORY NO. 8:**

14 Plaintiff Trujillo objects to Interrogatory No. 8. as overly broad, vague, and not
15 proportional to the needs of the litigation, considering this interrogatory requires the identification
16 of each and every instance when Google unlawfully intercepted Plaintiff Trujillo’s data in order
17 to categorize such data, rendering this Interrogatory No. 8 not possible to fully and accurately
18 answer.

19 Notwithstanding and subject to these objections, Plaintiff Trujillo responds that each and
20 every time that Plaintiff Trujillo (and class members) used private browsing mode, Google
21 intercepted at least the following categories of personal and sensitive user data: 1) the “GET
22 request,” which provides the content the user’s browsing software asked the website to display
23 while in private browsing mode; 2) the unique internet protocol (“IP”) address of the user’s
24 connection to the internet while in private browsing mode; 3) information identifying the browser
25 software that the user is using, including any “fingerprint” data (such as user interactions with
26 Google’s special, unique fonts and pixels) that allow Google to further track and identify a
27 particular user, while in private browsing mode; 4) any “User-ID” the website issued to the user
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1 while in private browsing mode, allowing Google to track and match the user across other websites
2 the user visits, whether in private browsing mode or not; 5) the geolocation of the user while in
3 private browsing mode; and 6) information contained in “Google cookies” from prior browsing
4 sessions which, at a minimum, contain the prior websites the user has viewed, and may also contain
5 usernames, login information, browsing activity (such as clicking buttons on websites), which in
6 turn helps Google enrich Google’s profile on the user, which Google then uses for its own benefit
7 and profit.

8 **INTERROGATORY NO. 9:**

9 Describe with particularity YOUR understanding of the terms “private browsing” and
10 “browse privately” in the Google disclosures that YOU allege led YOU to “believe[] that [YOUR]
11 data would not be collected by Google and that Google would not intercept [YOUR]
12 communications when [YOU] were in ‘private browsing mode,’” *see* SAC ¶ 3, including by stating
13 the basis for YOUR understanding and stating whether YOU believed using private browsing
14 would completely conceal YOUR internet browsing activity from everyone, or if not, identifying
15 the persons or entities which YOU understood would still be able to view YOUR internet browsing
16 activity when YOU were in private browsing mode.

17 **RESPONSE TO INTERROGATORY NO. 9:**

18 Plaintiff Trujillo objects to Interrogatory No. 9 as not relevant to the claims and/or defenses
19 of this case to the extent it purports to suggest that review of and consent to Google’s Terms of
20 Service, or any terms of service, privacy policies, or other notices incorporated therein, is a
21 necessary predicate for any claim in this litigation and not proportional to the needs of this
22 litigation. Plaintiff Trujillo’s allegations relate to Google’s conduct of secretly and unlawfully
23 intercepting, collecting, analyzing, and monetizing Plaintiff Trujillo’s (and class members’)
24 browsing activity conducted in private browsing mode, despite Google’s representations that
25 Plaintiff Trujillo’s (and class members’) browsing information would not be saved.

26 Notwithstanding and subject to these objections, Plaintiff Trujillo responds that “private
27 browsing” and “browse privately” are described in the Incognito splash screen she read each time
28

1 she began a private browsing session in Chrome—that her activity in private browsing mode might
2 still be visible to the websites she visits, her employer or school, or her internet service provider.
3 Google was not listed, and she did not consent to Google’s interception and collection of her
4 private browsing activity. Plaintiff Trujillo further states that, in addition to this description in the
5 Incognito splash screen, when she begins a private browsing session in Chrome the background
6 turns dark, depicts a stealthy figure, and states that Chrome will not save her browsing history,
7 cookies and site data, and information entered into forms, reinforcing that any private browsing
8 activity would be concealed from and not subject to Google’s interception and collection.

9 **INTERROGATORY NO. 10:**

10 Describe with particularity YOUR alleged awareness that YOU are able to sell YOUR
11 personal data, via other websites such as Killi (<https://killi.io/earn/>), *see* SAC ¶¶ 170, 175, 180,
12 185, 190, including by describing when YOU first became aware of this alleged fact, how YOU
13 became aware of this alleged fact, whether you contend that YOU could sell to Killi or other
14 entities the categories of “personal data” that YOU allege Google misappropriated, whether you
15 have ever attempted to sell such data (and if not, why not), and whether YOU contend that
16 Google’s alleged conduct has affected YOUR alleged ability to sell YOUR personal data via other
17 websites such as Killi.

18 **RESPONSE TO INTERROGATORY NO. 10:**

19 Plaintiff Trujillo objects to Interrogatory No. 10 as not relevant to the claims and/or
20 defenses of this case to the extent it purports to suggest that Plaintiff Trujillo’s sale of any personal
21 data is a necessary predicate for any claim in this litigation. Plaintiff Trujillo’s allegations relate
22 to Google’s conduct of secretly and unlawfully intercepting, collecting, analyzing, and monetizing
23 Plaintiff Trujillo’s (and class members’) browsing activity conducted in private browsing mode,
24 despite Google’s representations that Plaintiff Trujillo’s (and class members’) browsing
25 information would not be saved. Google has, instead, taken this personal data without Plaintiff
26 Trujillo’s (and class members’) permission, which in turn helps Google enrich Google’s profile of
27 Plaintiff Trujillo (and class members), which Google then uses for its own benefit and profit.
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1 Plaintiff Trujillo seeks, among other things, non-restitutionary disgorgement of all of Google's
2 profits that were derived, in whole or in part, from Google's unlawful interception and subsequent
3 use of Plaintiff Trujillo's communications and personal data. Plaintiff Trujillo also objects that this
4 interrogatory is compound, asking in part about her awareness that she is able to sell personal data
5 but then separately including requests about the separate topics of 1) when she first became aware,
6 2) how she became aware, 3) whether she has ever attempted to sell her personal data, 4) if she
7 has not attempted to sell her personal data, why not, and 5) whether Google's unlawful interception
8 of the personal data has affected her ability to sell that personal data. This interrogatory therefore
9 counts as five separate interrogatories.

10 Notwithstanding and subject to these objections, Plaintiff Trujillo responds that she has
11 been aware of the value of her personal data for years, and she chose to browse privately to protect
12 that personal data from Google's and other tech companies' collection for their own benefit and
13 profit. Plaintiff Trujillo cannot recall specifically when she first learned of websites like Killi, but
14 she knew about companies like Brave and others that provide monetary compensation for personal
15 data before filing this lawsuit. To the best of Plaintiff Trujillo's recollection, she cannot recall
16 attempting to sell her personal data, but because Plaintiff Trujillo could sell her personal data to
17 websites like Killi and similar websites, the personal data that Google has unlawfully intercepted
18 while Plaintiff Trujillo was in private browsing mode has inherent value, and Google unlawfully
19 collected that personal data without providing compensation to Plaintiff Trujillo.
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VERIFICATION

Under penalties of perjury, I declare that I have read the foregoing Answers to Interrogatories, and that the Answers are true and correct to the best of my knowledge and belief.

By: _____

Printed Name: _____

Title: _____

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 2021, by _____, who has produced as identification _____, bearing number _____, expiring _____ and who did (did not) take an oath.

NOTARY PUBLIC SIGNATURE

Dated: June 7, 2021

MORGAN & MORGAN

/s/ John A. Yanchunis

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Ryan J. McGee (*pro hac vice*)
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Attorneys for Plaintiffs

PROOF OF SERVICE

I, Ryan J. McGee, declare:

I am a citizen of the United States and employed in the County of Hillsborough, Florida. I am over the age of 18 and not a party to the within action; my business address is 201 N. Franklin St., 7th Floor, Tampa, FL 33602.

On June 7, 2021, I served the following document described as:

Plaintiff's Objections and Responses to Defendant's First and Second Sets of Interrogatories

By electronic mail transmission from rmcgee@forthepeople.com on June 7, 2021, by transmitting a PDF format copy of such document to each person at the e-mail addresses listed below. The document was transmitted by electronic transmission and such transmission was reported as complete and without error:

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5 thaothai@quinnemanuel.com

6 *Attorneys for Defendant*

7 William Burck (pro hac vice)
8 Josef Ansorge (pro hac vice)
9 Quinn Emanuel Urquhart & Sullivan, LLP
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11 Washington, D.C., 20005
12 Tel: 202-538-8000
13 Fax: 202-538-8100
14 williamburck@quinnemanuel.com
15 josefansorge@quinnemanuel.com

16 *Attorneys for Defendant*

17 Jonathan Tse
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19 50 California Street, 22nd Floor
20 San Francisco, CA 94111
21 Tel: 415-875-6600
22 Fax: 415-875-6700
23 jonathantse@quinnemanuel.com

24 *Attorneys for Defendant*

25 Executed on June 7, 2021, at Tampa, Florida.

26
27 /s/ Ryan J. McGee
28 Ryan J. McGee

VERIFICATION

Under penalties of perjury, I declare that I have read the foregoing Answers to Interrogatories, and that the Answers are true and correct to the best of my knowledge and belief.

By: Monique Carolyn Trujillo

Printed Name: Monique Carolyn Trujillo

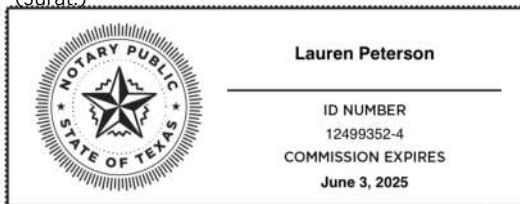
Title: N/A

STATE OF Texas

COUNTY OF Comal

The foregoing instrument was acknowledged before me this 17th day of November, 2021, by Monique Carolyn Trujillo, who has produced as identification California DRIVER LICENSE, bearing number B8914755, expiring 03/20/2022 and who did ☒ (did not) take an oath.

(Jurat:)



Lauren Peterson
NOTARY PUBLIC SIGNATURE

Lauren Peterson
Notary Public, State of Texas
Expiration: 06/03/2025

Notarized online using audio-video communication

EXHIBIT 29

**PLAINTIFF CHASOM
BROWN'S
OBJECTIONS AND
RESPONSES TO
DEFENDANT'S FOURTH
SET OF
INTERROGATORIES
(NOS. 12-15)**

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

CHASOM BROWN, WILLIAM BYATT,
JEREMY DAVIS, CHRISTOPHER
CASTILLO, and MONIQUE TRUJILLO
individually and on behalf of all other
similarly situated,

Plaintiffs,

v.

GOOGLE LLC,

Defendant.

Case No. 5:20-cv-03664-LHK-SVK

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**PLAINTIFF CHASOM BROWN'S OBJECTIONS AND RESPONSES
TO DEFENDANT'S FOURTH SET OF INTERROGATORIES (NOS. 12–15)**

Pursuant to Federal Rules of Civil Procedure 26 and 33, Plaintiff Chasom Brown (“Brown”) hereby objects and responds to Defendant’s, Google LLC (“Google”), Fourth Set of Interrogatories (Nos. 12–15). These objections and responses are made solely for the purpose of and in relation to this action. In addition, the objections and responses set forth in this document are based on Plaintiff Brown’s knowledge, investigations, and analysis to date. As discovery proceeds, Plaintiff Brown may become aware of additional facts or evidence and his analysis of the case may change. Plaintiff Brown reserves all rights to supplement and amend his objections and responses accordingly.

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INTERROGATORY NO. 12:

Describe with particularity whether YOU agreed to all terms in the documents you allege are part of the contract between YOU and Google, *see* SAC ¶ 268, including Google’s TERMS OF SERVICE, CHROME TERMS OF SERVICE, Google’s PRIVACY POLICY, CHROME PRIVACY NOTICE, and the CHROME INCOGNITO NOTICE, and if YOU did not agree to all terms in these documents, identify all terms YOU did agree to.

RESPONSE TO INTERROGATORY NO. 12:

Plaintiff Brown objects to this Interrogatory to the extent it purports to suggest that his agreement with Google's Terms of Service, Chrome Terms of Service, Privacy Policy, Chrome Privacy Notice, and/or Chrome Incognito Notice is a necessary predicate for any claim (other than the contract claim) in this litigation. Plaintiff's allegations relate to Google's conduct of secretly and unlawfully intercepting, collecting data from, analyzing, and monetizing Plaintiff's (and class members') browsing activity conducted in private browsing mode, despite Google's representations (including without limitation in the Incognito private browsing mode) that private browsing mode was private and that Plaintiff's (and class members') private browsing information would not be collected by Google. Users did not need any Google account to browse privately, using Incognito mode or otherwise. Further, to the best of Plaintiff's knowledge, he has never logged into any Google accounts in Chrome when using Chrome's private browsing mode.

Notwithstanding and subject to these objections, Plaintiff Brown responds that the Chrome Privacy Notice promises Plaintiff and Class members that Google does not collect or use private browsing communications, including by explaining that "[y]ou can limit the information Chrome stores on your system by using incognito mode" and that, within Incognito mode, "Chrome won't store certain information, such as: Basic browsing history information like URLs, cached paged text, or IP addresses of pages linked from the websites [users] visit [and] Snapshots of pages that [users] visit." Additionally, Google's Privacy Policy, the Incognito Screen, and the "Search & Browse Privately" page similarly promise that users can control Google's collection and use of their browsing data including by enabling private browsing mode such as Incognito mode, and that Google would not collect and use private browsing data. Google breached those promises, and as a result was able to obtain the personal property of Plaintiff and class members and earn unjust profits.

INTERROGATORY NO. 13:

Identify and describe with particularity any money that you have paid to Google.

RESPONSE TO INTERROGATORY NO. 13:

Plaintiff Brown objects to this Interrogatory to the extent it purports to suggest that monetary payment to Google is a necessary predicate for any claim in this litigation. Plaintiff and class members provided valuable consideration in the form of their respective personal information they agreed to share with Google in non-private browsing mode, which has ascertainable and demonstrated value by its use and sale by Google. Because Google unlawfully intercepted, collected data from, analyzed, and monetized Plaintiff's (and class members') browsing activity conducted in private browsing mode, this private and personally identifiable data and content has been diminished in value, and Plaintiff and class members have been deprived of their right to control the dissemination and use of their respective personal (and private) information and communications. Plaintiff Brown further objects to this Interrogatory as irrelevant to the extent it seeks information concerning money paid not related to private browsing.

Notwithstanding and subject to these objections, Plaintiff Brown responds that, to the best of his recollection, he has not directly paid any money to Google. Plaintiff has, however, provided valuable consideration in the form of his personal information for the use of Google products, but Google unlawfully intercepted, collected data from, analyzed, and monetized Plaintiff's browsing activity conducted in private browsing mode, the value of which has been diminished and Google has used to its benefit to increase its profits and revenues from targeted advertising and improvements of Google's other products.

INTERROGATORY NO. 14:

Identify all California or other applicable laws that you contend render the information that you allege Google misappropriated from you your personal property. *See, e.g.*, SAC ¶ 137 ("The CCPA recognizes that consumers' personal data is a property right."); *id.* ¶ 274 ("As a result of Google's breach(es), Google was able to obtain the personal property of Plaintiffs and Class members and earn unjust profits"); *id.* ¶ 282 ("Plaintiffs and Class members have suffered injury-

1 in-fact, including the loss of money and/or property as a result of Google’s ... practices, to wit, the
2 unauthorized disclosure and taking of the personal information which has value as demonstrated
3 by its use and sale by Google.”).

4 **RESPONSE TO INTERROGATORY NO. 14:**

5 Plaintiff Brown objects to this Interrogatory on the basis that discovery has not closed, and
6 Google is still producing documents evidencing its unlawful interception, collection of data from,
7 analysis, and monetization of Plaintiff’s (and class members’) browsing activity conducted in
8 private browsing mode. Therefore, Plaintiff reserves his right to amend this response as discovery
9 proceeds.

10 Notwithstanding and subject to these objections, Plaintiff Brown responds that his Second
11 Amended Complaint and pleadings filed in this case identify California and other applicable laws
12 that render the information that Google misappropriated from Plaintiff his personal property. These
13 include: the California Constitution; the Federal Wiretap Act, 18 U.S.C. § 2510, *et seq.*; the
14 California Invasion of Privacy Act (“CIPA”), California Penal Code §§ 631 and 632; the California
15 Comprehensive Computer Data Access and Fraud Act (“CDAFA”), Cal. Penal Code § 502, *et seq.*;
16 the California Unfair Competition Law (“UCL”), Cal. Bus. & Prof. Code § 17200, *et seq.*; invasion
17 of privacy under California law; intrusion upon seclusion under California law; and breach of
18 contract under California law. Google’s secret embedded code causes a secret, separate message
19 containing Plaintiff’s communications and data at issue to Google’s servers in California, and
20 Google’s employees in California reuse those communications and data collected, bringing
21 Google’s conduct under the laws of California. Additionally, Google’s own Terms of Service
22 explicitly states “California law will govern all disputes arising out of or relating to these terms,
23 service specific additional terms, or any related services, regardless of conflict of laws rules. These
24 disputes will be resolved exclusively in the federal or state courts of Santa Clara County,
25 California, USA, and [users] and Google consent to personal jurisdiction in those courts.” By
26 choosing California law for the resolution of disputes, Google has conceded that it is appropriate
27 to apply California law to its unlawful interception, collection of data from, analysis, and
28

1 monetization of Plaintiff's (and class members') browsing activity conducted in private browsing
2 mode.

3 **INTERROGATORY NO. 15:**

4 Identify and describe in detail any and all crimes of which YOU have been charged,
5 convicted, pleaded guilty, pleaded no contest, and/or have otherwise been held responsible. *See*,
6 *e.g.*, *Harris v. Vector Marketing Corp.*, 753 F.Supp.2d 996, 1015 (N.D. Cal. 2010) ("[t]he honesty
7 and credibility of a class representative is a relevant consideration when performing the adequacy
8 inquiry" (citation omitted)); *Del Campo v. American Corrective Counseling Servs., Inc.*, 2008 WL
9 2038047, at *4 (N.D. Cal. May 12, 2008) ("[I]t is self-evident that a Court must be concerned with
10 the integrity of individuals it designates as representatives for a large class of plaintiffs" (citation
11 omitted)); *Pena v. Taylor Farms Pacific, Inc.*, 305 F.R.D. 197, 215-16 (E.D. Cal. 2015) (finding
12 Plaintiff's conviction for identity theft near the time period relevant to her claims and failure to
13 initially disclose the conviction was "likely to cast doubt on her honesty and credibility," which
14 rendered her "not an adequate representative.").

15 **RESPONSE TO INTERROGATORY NO. 15:**

16 Plaintiff Brown objects to Interrogatory No. 15 as overly broad and irrelevant, insofar as it
17 requests information concerning any crimes for which Plaintiff was charged but were dismissed
18 or for which Plaintiff was otherwise exonerated. Plaintiff further objects to Interrogatory No. 15
19 as overly broad and irrelevant, insofar as it requests information concerning criminal convictions
20 for which more than ten years have passed since conviction or release from confinement,
21 whichever is later. Fed. R. Civ. P. 609(b).

22 Notwithstanding and subject to these objections, none; Plaintiff has never been charged,
23 convicted, pleaded guilty, pleaded no contest, and/or have otherwise been held responsible for any
24 crimes.
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VERIFICATION

Under penalties of perjury, I declare that I have read the foregoing Answers to Interrogatories, and that the Answers are true and correct to the best of my knowledge and belief.

By: _____

Printed Name: _____

Title: _____

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 2021, by _____, who has produced as identification _____, bearing number _____, expiring _____ and who did (did not) take an oath.

NOTARY PUBLIC SIGNATURE

Dated: July 30, 2021

MORGAN & MORGAN

/s/ John A. Yanchunis

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Ryan J. McGee (*pro hac vice*)
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Facsimile: (310) 789-3150

Attorneys for Plaintiffs

PROOF OF SERVICE

I, Jennifer Cabezas, declare:

I am a citizen of the United States and employed in the County of Hillsborough, Florida. I am over the age of 18 and not a party to the within action; my business address is 201 N. Franklin St., 7th Floor, Tampa, FL 33602.

On July 30, 2021, I served the following document described as:

Plaintiff's Objections and Responses to Defendant's Fourth Set of Interrogatories

By electronic mail transmission from jcabezas@forthepeople.com on July 30, 2021, by transmitting a PDF format copy of such document to each person at the e-mail addresses listed below. The document was transmitted by electronic transmission and such transmission was reported as complete and without error:

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Attorney for Defendant

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Viola Trebicka
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Attorneys for Defendant

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3 thaothai@quinnemanuel.com

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5 William Burck (pro hac vice)
6 Josef Ansorge (pro hac vice)
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11 Fax: 202-538-8100
12 williamburck@quinnemanuel.com
13 josefansorge@quinnemanuel.com

14 *Attorneys for Defendant*

15 Jonathan Tse
16 Quinn Emanuel Urquhart & Sullivan, LLP
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18 San Francisco, CA 94111
19 Tel: 415-875-6600
20 Fax: 415-875-6700
21 jonathantse@quinnemanuel.com

22 *Attorneys for Defendant*

23 Executed on July 30, 2021, at Tampa, Florida.

24 /s/ Jennifer Cabezas
25 Jennifer Cabezas
26
27
28

EXHIBIT 30

PLAINTIFF WILLIAM BYATT'S OBJECTIONS AND RESPONSES TO DEFENDANT'S FOURTH SET OF INTERROGATORIES (NOS. 12-15)

**Redacted Version of
Document Sought
to be Sealed**

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

CHASOM BROWN, WILLIAM BYATT,
JEREMY DAVIS, CHRISTOPHER
CASTILLO, and MONIQUE TRUJILLO
individually and on behalf of all other
similarly situated,

Plaintiffs,

v.

GOOGLE LLC,

Defendant.

Case No. 5:20-cv-03664-LHK-SVK

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**PLAINTIFF WILLIAM BYATT'S OBJECTIONS AND RESPONSES
TO DEFENDANT'S FOURTH SET OF INTERROGATORIES (NOS. 12–15)**

Pursuant to Federal Rules of Civil Procedure 26 and 33, Plaintiff William Byatt (“Byatt”) hereby objects and responds to Defendant’s, Google LLC (“Google”), Fourth Set of Interrogatories (Nos. 12–15). These objections and responses are made solely for the purpose of and in relation to this action. In addition, the objections and responses set forth in this document are based on Plaintiff Byatt’s knowledge, investigations, and analysis to date. As discovery proceeds, Plaintiff Byatt may become aware of additional facts or evidence and his analysis of the case may change. Plaintiff Byatt reserves all rights to supplement and amend his objections and responses accordingly.

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INTERROGATORY NO. 12:

Describe with particularity whether YOU agreed to all terms in the documents you allege are part of the contract between YOU and Google, *see* SAC ¶ 268, including Google’s TERMS OF SERVICE, CHROME TERMS OF SERVICE, Google’s PRIVACY POLICY, CHROME PRIVACY NOTICE, and the CHROME INCOGNITO NOTICE, and if YOU did not agree to all terms in these documents, identify all terms YOU did agree to.

RESPONSE TO INTERROGATORY NO. 12:

Plaintiff Byatt objects to this Interrogatory to the extent it purports to suggest that his agreement with Google's Terms of Service, Chrome Terms of Service, Privacy Policy, Chrome Privacy Notice, and/or Chrome Incognito Notice is a necessary predicate for any claim (other than the contract claim) in this litigation. Plaintiff's allegations relate to Google's conduct of secretly and unlawfully intercepting, collecting data from, analyzing, and monetizing Plaintiff's (and class members') browsing activity conducted in private browsing mode, despite Google's representations (including without limitation in the Incognito private browsing mode) that private browsing mode was private and that Plaintiff's (and class members') private browsing information would not be collected by Google. Users did not need any Google account to browse privately, using Incognito mode or otherwise. Further, to the best of Plaintiff's knowledge, he has never logged into any Google accounts in Chrome when using Chrome's private browsing mode.

Notwithstanding and subject to these objections, Plaintiff Byatt responds that the Chrome Privacy Notice promises Plaintiff and Class members that Google does not collect or use private browsing communications, including by explaining that "[y]ou can limit the information Chrome stores on your system by using incognito mode" and that, within Incognito mode, "Chrome won't store certain information, such as: Basic browsing history information like URLs, cached paged text, or IP addresses of pages linked from the websites [users] visit [and] Snapshots of pages that [users] visit." Additionally, Google's Privacy Policy, the Incognito Screen, and the "Search & Browse Privately" page similarly promise that users can control Google's collection and use of their browsing data including by enabling private browsing mode such as Incognito mode, and that Google would not collect and use private browsing data. Google breached those promises, and as a result was able to obtain the personal property of Plaintiff and class members and earn unjust profits.

INTERROGATORY NO. 13:

Identify and describe with particularity any money that you have paid to Google.

RESPONSE TO INTERROGATORY NO. 13:

Plaintiff Byatt objects to this Interrogatory to the extent it purports to suggest that monetary payment to Google is a necessary predicate for any claim in this litigation. Plaintiff and class members provided valuable consideration in the form of their respective personal information they agreed to share with Google in non-private browsing mode, which has ascertainable and demonstrated value by its use and sale by Google. Because Google unlawfully intercepted, collected data from, analyzed, and monetized Plaintiff's (and class members') browsing activity conducted in private browsing mode, this private and personally identifiable data and content has been diminished in value, and Plaintiff and class members have been deprived of their right to control the dissemination and use of their respective personal (and private) information and communications. Plaintiff Byatt further objects to this Interrogatory as irrelevant to the extent it seeks information concerning money paid not related to private browsing.

Notwithstanding and subject to these objections, Plaintiff Byatt responds that, to the best of his recollection, he has paid to Google approximately [REDACTED] per month for Google One (since approximately [REDACTED] per month for YouTube Premium (since approximately [REDACTED] as a Google Play Music subscriber, which was converted into a YouTube premium subscription in approximately [REDACTED]), and approximately [REDACTED] per month for Google Fi (since approximately [REDACTED] Plaintiff has, however, provided valuable consideration in the form of his personal information for the use of Google products, but Google unlawfully intercepted, collected data from, analyzed, and monetized Plaintiff's browsing activity conducted in private browsing mode, the value of which has been diminished and Google has used to its benefit to increase its profits and revenues from targeted advertising and improvements of Google's other products.

INTERROGATORY NO. 14:

1 Identify all California or other applicable laws that you contend render the information that
2 you allege Google misappropriated from you your personal property. *See, e.g.*, SAC ¶ 137 (“The
3 CCPA recognizes that consumers’ personal data is a property right.”); *id.* ¶ 274 (“As a result of
4 Google’s breach(es), Google was able to obtain the personal property of Plaintiffs and Class
5 members and earn unjust profits”); *id.* ¶ 282 (“Plaintiffs and Class members have suffered injury-
6 in-fact, including the loss of money and/or property as a result of Google’s ... practices, to wit, the
7 unauthorized disclosure and taking of the personal information which has value as demonstrated
8 by its use and sale by Google.”).

9 **RESPONSE TO INTERROGATORY NO. 14:**

10 Plaintiff Byatt objects to this Interrogatory on the basis that discovery has not closed, and
11 Google is still producing documents evidencing its unlawful interception, collection of data from,
12 analysis, and monetization of Plaintiff’s (and class members’) browsing activity conducted in
13 private browsing mode. Therefore, Plaintiff reserves his right to amend this response as discovery
14 proceeds.

15 Notwithstanding and subject to these objections, Plaintiff Byatt responds that his Second
16 Amended Complaint and pleadings filed in this case identify California and other applicable laws
17 that render the information that Google misappropriated from Plaintiff his personal property. These
18 include: the California Constitution; the Federal Wiretap Act, 18 U.S.C. § 2510, *et seq.*; the
19 California Invasion of Privacy Act (“CIPA”), California Penal Code §§ 631 and 632; the California
20 Comprehensive Computer Data Access and Fraud Act (“CDAFA”), Cal. Penal Code § 502, *et seq.*;
21 the California Unfair Competition Law (“UCL”), Cal. Bus. & Prof. Code § 17200, *et seq.*; invasion
22 of privacy under California law; intrusion upon seclusion under California law; and breach of
23 contract under California law. Google’s secret embedded code causes a secret, separate message
24 containing Plaintiff’s communications and data at issue to Google’s servers in California, and
25 Google’s employees in California reuse those communications and data collected, bringing
26 Google’s conduct under the laws of California. Additionally, Google’s own Terms of Service
27 explicitly states “California law will govern all disputes arising out of or relating to these terms,
28

1 service specific additional terms, or any related services, regardless of conflict of laws rules. These
2 disputes will be resolved exclusively in the federal or state courts of Santa Clara County,
3 California, USA, and [users] and Google consent to personal jurisdiction in those courts.” By
4 choosing California law for the resolution of disputes, Google has conceded that it is appropriate
5 to apply California law to its unlawful interception, collection of data from, analysis, and
6 monetization of Plaintiff’s (and class members’) browsing activity conducted in private browsing
7 mode.

8 **INTERROGATORY NO. 15:**

9 Identify and describe in detail any and all crimes of which YOU have been charged,
10 convicted, pleaded guilty, pleaded no contest, and/or have otherwise been held responsible. *See,*
11 *e.g., Harris v. Vector Marketing Corp.*, 753 F.Supp.2d 996, 1015 (N.D. Cal. 2010) (“[t]he honesty
12 and credibility of a class representative is a relevant consideration when performing the adequacy
13 inquiry” (citation omitted)); *Del Campo v. American Corrective Counseling Servs., Inc.*, 2008 WL
14 2038047, at *4 (N.D. Cal. May 12, 2008) (“[I]t is self-evident that a Court must be concerned with
15 the integrity of individuals it designates as representatives for a large class of plaintiffs” (citation
16 omitted)); *Pena v. Taylor Farms Pacific, Inc.*, 305 F.R.D. 197, 215-16 (E.D. Cal. 2015) (finding
17 Plaintiff’s conviction for identity theft near the time period relevant to her claims and failure to
18 initially disclose the conviction was “likely to cast doubt on her honesty and credibility,” which
19 rendered her “not an adequate representative.”).

20 **RESPONSE TO INTERROGATORY NO. 15:**

21 Plaintiff Byatt objects to Interrogatory No. 15 as overly broad and irrelevant, insofar as it
22 requests information concerning any crimes for which Plaintiff was charged but were dismissed
23 or for which Plaintiff was otherwise exonerated. Plaintiff further objects to Interrogatory No. 15
24 as overly broad and irrelevant, insofar as it requests information concerning criminal convictions
25 for which more than ten years have passed since conviction or release from confinement,
26 whichever is later. Fed. R. Civ. P. 609(b).

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1 Notwithstanding and subject to these objections, none; Plaintiff has never been charged,
2 convicted, pleaded guilty, pleaded no contest, and/or have otherwise been held responsible for any
3 crimes.
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VERIFICATION

Under penalties of perjury, I declare that I have read the foregoing Answers to Interrogatories, and that the Answers are true and correct to the best of my knowledge and belief.

By: _____

Printed Name: _____

Title: _____

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 2021, by _____, who has produced as identification _____, bearing number _____, expiring _____ and who did (did not) take an oath.

NOTARY PUBLIC SIGNATURE

1 Dated: July 30, 2021

MORGAN & MORGAN

2 /s/ John A. Yanchunis

3 John A. Yanchunis (*pro hac vice*)
4 Ryan J. McGee (*pro hac vice*)
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27 Facsimile: (310) 789-3150

28 *Attorneys for Plaintiffs*

PROOF OF SERVICE

I, Jennifer Cabezas, declare:

I am a citizen of the United States and employed in the County of Hillsborough, Florida. I am over the age of 18 and not a party to the within action; my business address is 201 N. Franklin St., 7th Floor, Tampa, FL 33602.

On July 30, 2021, I served the following document described as:

Plaintiff's Objections and Responses to Defendant's Fourth Set of Interrogatories

By electronic mail transmission from jcabezas@forthepeople.com on July 30, 2021, by transmitting a PDF format copy of such document to each person at the e-mail addresses listed below. The document was transmitted by electronic transmission and such transmission was reported as complete and without error:

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andrewschapiro@quinnemanuel.com

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Attorneys for Defendant

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1 Fax: 650-8015100
2 dianedoolittle@quinnemanuel.com
3 thaothai@quinnemanuel.com

4 *Attorneys for Defendant*

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6 Josef Ansorge (pro hac vice)
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10 Tel: 202-538-8000
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13 josefansorge@quinnemanuel.com

14 *Attorneys for Defendant*

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17 50 California Street, 22nd Floor
18 San Francisco, CA 94111
19 Tel: 415-875-6600
20 Fax: 415-875-6700
21 jonathantse@quinnemanuel.com

22 *Attorneys for Defendant*

23 Executed on July 30, 2021, at Tampa, Florida.

24 /s/ Jennifer Cabezas
25 Jennifer Cabezas
26
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EXHIBIT 31

PLAINTIFF CHRISTOPHER CASTILLO'S OBJECTIONS AND RESPONSES TO DEFENDANT'S FOURTH SET OF INTERROGATORIES (NOS. 12-15)

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

CHASOM BROWN, WILLIAM BYATT,
JEREMY DAVIS, CHRISTOPHER
CASTILLO, and MONIQUE TRUJILLO
individually and on behalf of all other
similarly situated,

Plaintiffs,

v.

GOOGLE LLC,

Defendant.

Case No. 5:20-cv-03664-LHK-SVK

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**PLAINTIFF CHRISTOPHER CASTILLO’S OBJECTIONS AND RESPONSES
TO DEFENDANT’S FOURTH SET OF INTERROGATORIES (NOS. 12–15)**

Pursuant to Federal Rules of Civil Procedure 26 and 33, Plaintiff Christopher Castillo (“Castillo”) hereby objects and responds to Defendant’s, Google LLC (“Google”), Fourth Set of Interrogatories (Nos. 12–15). These objections and responses are made solely for the purpose of and in relation to this action. In addition, the objections and responses set forth in this document are based on Plaintiff Castillo’s knowledge, investigations, and analysis to date. As discovery proceeds, Plaintiff Castillo may become aware of additional facts or evidence and his analysis of the case may change. Plaintiff Castillo reserves all rights to supplement and amend his objections and responses accordingly.

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INTERROGATORY NO. 12:

Describe with particularity whether YOU agreed to all terms in the documents you allege are part of the contract between YOU and Google, *see* SAC ¶ 268, including Google’s TERMS OF SERVICE, CHROME TERMS OF SERVICE, Google’s PRIVACY POLICY, CHROME PRIVACY NOTICE, and the CHROME INCOGNITO NOTICE, and if YOU did not agree to all terms in these documents, identify all terms YOU did agree to.

RESPONSE TO INTERROGATORY NO. 12:

Plaintiff Castillo objects to this Interrogatory to the extent it purports to suggest that his agreement with Google's Terms of Service, Chrome Terms of Service, Privacy Policy, Chrome Privacy Notice, and/or Chrome Incognito Notice is a necessary predicate for any claim (other than the contract claim) in this litigation. Plaintiff's allegations relate to Google's conduct of secretly and unlawfully intercepting, collecting data from, analyzing, and monetizing Plaintiff's (and class members') browsing activity conducted in private browsing mode, despite Google's representations (including without limitation in the Incognito private browsing mode) that private browsing mode was private and that Plaintiff's (and class members') private browsing information would not be collected by Google. Users did not need any Google account to browse privately, using Incognito mode or otherwise. Further, to the best of Plaintiff's knowledge, he has never logged into any Google accounts in Chrome when using Chrome's private browsing mode.

Notwithstanding and subject to these objections, Plaintiff Castillo responds that the Chrome Privacy Notice promises Plaintiff and Class members that Google does not collect or use private browsing communications, including by explaining that "[y]ou can limit the information Chrome stores on your system by using incognito mode" and that, within Incognito mode, "Chrome won't store certain information, such as: Basic browsing history information like URLs, cached paged text, or IP addresses of pages linked from the websites [users] visit [and] Snapshots of pages that [users] visit." Additionally, Google's Privacy Policy, the Incognito Screen, and the "Search & Browse Privately" page similarly promise that users can control Google's collection and use of their browsing data including by enabling private browsing mode such as Incognito mode, and that Google would not collect and use private browsing data. Google breached those promises, and as a result was able to obtain the personal property of Plaintiff and class members and earn unjust profits.

INTERROGATORY NO. 13:

Identify and describe with particularity any money that you have paid to Google.

RESPONSE TO INTERROGATORY NO. 13:

Plaintiff Castillo objects to this Interrogatory to the extent it purports to suggest that monetary payment to Google is a necessary predicate for any claim in this litigation. Plaintiff and class members provided valuable consideration in the form of their respective personal information they agreed to share with Google in non-private browsing mode, which has ascertainable and demonstrated value by its use and sale by Google. Because Google unlawfully intercepted, collected data from, analyzed, and monetized Plaintiff's (and class members') browsing activity conducted in private browsing mode, this private and personally identifiable data and content has been diminished in value, and Plaintiff and class members have been deprived of their right to control the dissemination and use of their respective personal (and private) information and communications. Plaintiff Castillo further objects to this Interrogatory as irrelevant to the extent it seeks information concerning money paid not related to private browsing.

Notwithstanding and subject to these objections, Plaintiff Castillo responds that, to the best of his recollection, he has not directly paid any money to Google. Plaintiff has, however, provided valuable consideration in the form of his personal information for the use of Google products, but Google unlawfully intercepted, collected data from, analyzed, and monetized Plaintiff's browsing activity conducted in private browsing mode, the value of which has been diminished and Google has used to its benefit to increase its profits and revenues from targeted advertising and improvements of Google's other products.

INTERROGATORY NO. 14:

Identify all California or other applicable laws that you contend render the information that you allege Google misappropriated from you your personal property. *See, e.g.*, SAC ¶ 137 ("The CCPA recognizes that consumers' personal data is a property right."); *id.* ¶ 274 ("As a result of Google's breach(es), Google was able to obtain the personal property of Plaintiffs and Class members and earn unjust profits"); *id.* ¶ 282 ("Plaintiffs and Class members have suffered injury-

1 in-fact, including the loss of money and/or property as a result of Google's ... practices, to wit, the
2 unauthorized disclosure and taking of the personal information which has value as demonstrated
3 by its use and sale by Google."").

4 **RESPONSE TO INTERROGATORY NO. 14:**

5 Plaintiff Castillo objects to this Interrogatory on the basis that discovery has not closed,
6 and Google is still producing documents evidencing its unlawful interception, collection of data
7 from, analysis, and monetization of Plaintiff's (and class members') browsing activity conducted
8 in private browsing mode. Therefore, Plaintiff reserves his right to amend this response as
9 discovery proceeds.

10 Notwithstanding and subject to these objections, Plaintiff Castillo responds that his Second
11 Amended Complaint and pleadings filed in this case identify California and other applicable laws
12 that render the information that Google misappropriated from Plaintiff his personal property. These
13 include: the California Constitution; the Federal Wiretap Act, 18 U.S.C. § 2510, *et seq.*; the
14 California Invasion of Privacy Act ("CIPA"), California Penal Code §§ 631 and 632; the California
15 Comprehensive Computer Data Access and Fraud Act ("CDAFA"), Cal. Penal Code § 502, *et seq.*;
16 the California Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code § 17200, *et seq.*; invasion
17 of privacy under California law; intrusion upon seclusion under California law; and breach of
18 contract under California law. Google's secret embedded code causes a secret, separate message
19 containing Plaintiff's communications and data at issue to Google's servers in California, and
20 Google's employees in California reuse those communications and data collected, bringing
21 Google's conduct under the laws of California. Additionally, Google's own Terms of Service
22 explicitly states "California law will govern all disputes arising out of or relating to these terms,
23 service specific additional terms, or any related services, regardless of conflict of laws rules. These
24 disputes will be resolved exclusively in the federal or state courts of Santa Clara County,
25 California, USA, and [users] and Google consent to personal jurisdiction in those courts." By
26 choosing California law for the resolution of disputes, Google has conceded that it is appropriate
27 to apply California law to its unlawful interception, collection of data from, analysis, and
28

1 monetization of Plaintiff's (and class members') browsing activity conducted in private browsing
2 mode.

3 **INTERROGATORY NO. 15:**

4 Identify and describe in detail any and all crimes of which YOU have been charged,
5 convicted, pleaded guilty, pleaded no contest, and/or have otherwise been held responsible. *See*,
6 *e.g.*, *Harris v. Vector Marketing Corp.*, 753 F.Supp.2d 996, 1015 (N.D. Cal. 2010) ("[t]he honesty
7 and credibility of a class representative is a relevant consideration when performing the adequacy
8 inquiry" (citation omitted)); *Del Campo v. American Corrective Counseling Servs., Inc.*, 2008 WL
9 2038047, at *4 (N.D. Cal. May 12, 2008) ("[I]t is self-evident that a Court must be concerned with
10 the integrity of individuals it designates as representatives for a large class of plaintiffs" (citation
11 omitted)); *Pena v. Taylor Farms Pacific, Inc.*, 305 F.R.D. 197, 215-16 (E.D. Cal. 2015) (finding
12 Plaintiff's conviction for identity theft near the time period relevant to her claims and failure to
13 initially disclose the conviction was "likely to cast doubt on her honesty and credibility," which
14 rendered her "not an adequate representative.").

15 **RESPONSE TO INTERROGATORY NO. 15:**

16 Plaintiff Castillo objects to Interrogatory No. 15 as overly broad and irrelevant, insofar as
17 it requests information concerning any crimes for which Plaintiff was charged but were dismissed
18 or for which Plaintiff was otherwise exonerated. Plaintiff further objects to Interrogatory No. 15
19 as overly broad and irrelevant, insofar as it requests information concerning criminal convictions
20 for which more than ten years have passed since conviction or release from confinement,
21 whichever is later. Fed. R. Civ. P. 609(b).

22 Notwithstanding and subject to these objections, none; Plaintiff has never been charged,
23 convicted, pleaded guilty, pleaded no contest, and/or have otherwise been held responsible for any
24 crimes.
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VERIFICATION

Under penalties of perjury, I declare that I have read the foregoing Answers to Interrogatories, and that the Answers are true and correct to the best of my knowledge and belief.

By: _____

Printed Name: _____

Title: _____

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 2021, by _____, who has produced as identification _____, bearing number _____, expiring _____ and who did (did not) take an oath.

NOTARY PUBLIC SIGNATURE

1 Dated: July 30, 2021

MORGAN & MORGAN

2 /s/ John A. Yanchunis

3 John A. Yanchunis (*pro hac vice*)
4 Ryan J. McGee (*pro hac vice*)
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15 Rossana Baeza (admitted *pro hac vice*)
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19 William S. Carmody
20 Shawn Rabin
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24 Amanda K. Bonn (270891)
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25 1900 Avenue of the Stars, Suite 1400
26 Los Angeles, California 90067
Telephone: (310) 789-3100
27 Facsimile: (310) 789-3150

28 *Attorneys for Plaintiffs*

PROOF OF SERVICE

I, Jennifer Cabezas, declare:

I am a citizen of the United States and employed in the County of Hillsborough, Florida. I am over the age of 18 and not a party to the within action; my business address is 201 N. Franklin St., 7th Floor, Tampa, FL 33602.

On July 30, 2021, I served the following document described as:

Plaintiff's Objections and Responses to Defendant's Fourth Set of Interrogatories

By electronic mail transmission from jcabezas@forthepeople.com on July 30, 2021, by transmitting a PDF format copy of such document to each person at the e-mail addresses listed below. The document was transmitted by electronic transmission and such transmission was reported as complete and without error:

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Attorneys for Defendant

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3 thaothai@quinnemanuel.com

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13 josefansorge@quinnemanuel.com

14 *Attorneys for Defendant*

15 Jonathan Tse
16 Quinn Emanuel Urquhart & Sullivan, LLP
17 50 California Street, 22nd Floor
18 San Francisco, CA 94111
19 Tel: 415-875-6600
20 Fax: 415-875-6700
21 jonathantse@quinnemanuel.com

22 *Attorneys for Defendant*

23 Executed on July 30, 2021, at Tampa, Florida.

24 /s/ Jennifer Cabezas
25 Jennifer Cabezas
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EXHIBIT 32

PLAINTIFF JEREMY DAVIS' OBJECTIONS AND RESPONSES TO DEFENDANT'S FOURTH SET OF INTERROGATORIES (NOS. 12-15)

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

CHASOM BROWN, WILLIAM BYATT,
JEREMY DAVIS, CHRISTOPHER
CASTILLO, and MONIQUE TRUJILLO
individually and on behalf of all other
similarly situated,

Plaintiffs,

v.

GOOGLE LLC,

Defendant.

Case No. 5:20-cv-03664-LHK-SVK

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**PLAINTIFF JEREMY DAVIS' OBJECTIONS AND RESPONSES
TO DEFENDANT'S FOURTH SET OF INTERROGATORIES (NOS. 12–15)**

Pursuant to Federal Rules of Civil Procedure 26 and 33, Plaintiff Jeremy Davis (“Davis”) hereby objects and responds to Defendant’s, Google LLC (“Google”), Fourth Set of Interrogatories (Nos. 12–15). These objections and responses are made solely for the purpose of and in relation to this action. In addition, the objections and responses set forth in this document are based on Plaintiff Davis’ knowledge, investigations, and analysis to date. As discovery proceeds, Plaintiff Davis may become aware of additional facts or evidence and his analysis of the case may change. Plaintiff Davis reserves all rights to supplement and amend his objections and responses accordingly.

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INTERROGATORY NO. 12:

Describe with particularity whether YOU agreed to all terms in the documents you allege are part of the contract between YOU and Google, *see* SAC ¶ 268, including Google’s TERMS OF SERVICE, CHROME TERMS OF SERVICE, Google’s PRIVACY POLICY, CHROME PRIVACY NOTICE, and the CHROME INCOGNITO NOTICE, and if YOU did not agree to all terms in these documents, identify all terms YOU did agree to.

RESPONSE TO INTERROGATORY NO. 12:

Plaintiff Davis objects to this Interrogatory to the extent it purports to suggest that his agreement with Google's Terms of Service, Chrome Terms of Service, Privacy Policy, Chrome Privacy Notice, and/or Chrome Incognito Notice is a necessary predicate for any claim (other than the contract claim) in this litigation. Plaintiff's allegations relate to Google's conduct of secretly and unlawfully intercepting, collecting data from, analyzing, and monetizing Plaintiff's (and class members') browsing activity conducted in private browsing mode, despite Google's representations (including without limitation in the Incognito private browsing mode) that private browsing mode was private and that Plaintiff's (and class members') private browsing information would not be collected by Google. Users did not need any Google account to browse privately, using Incognito mode or otherwise. Further, to the best of Plaintiff's knowledge, he has never logged into any Google accounts in Chrome when using Chrome's private browsing mode.

Notwithstanding and subject to these objections, Plaintiff Davis responds that the Chrome Privacy Notice promises Plaintiff and Class members that Google does not collect or use private browsing communications, including by explaining that "[y]ou can limit the information Chrome stores on your system by using incognito mode" and that, within Incognito mode, "Chrome won't store certain information, such as: Basic browsing history information like URLs, cached paged text, or IP addresses of pages linked from the websites [users] visit [and] Snapshots of pages that [users] visit." Additionally, Google's Privacy Policy, the Incognito Screen, and the "Search & Browse Privately" page similarly promise that users can control Google's collection and use of their browsing data including by enabling private browsing mode such as Incognito mode, and that Google would not collect and use private browsing data. Google breached those promises, and as a result was able to obtain the personal property of Plaintiff and class members and earn unjust profits.

INTERROGATORY NO. 13:

Identify and describe with particularity any money that you have paid to Google.

RESPONSE TO INTERROGATORY NO. 13:

Plaintiff Davis objects to this Interrogatory to the extent it purports to suggest that monetary payment to Google is a necessary predicate for any claim in this litigation. Plaintiff and class members provided valuable consideration in the form of their respective personal information they agreed to share with Google in non-private browsing mode, which has ascertainable and demonstrated value by its use and sale by Google. Because Google unlawfully intercepted, collected data from, analyzed, and monetized Plaintiff's (and class members') browsing activity conducted in private browsing mode, this private and personally identifiable data and content has been diminished in value, and Plaintiff and class members have been deprived of their right to control the dissemination and use of their respective personal (and private) information and communications. Plaintiff Davis further objects to this Interrogatory as irrelevant to the extent it seeks information concerning money paid not related to private browsing.

Notwithstanding and subject to these objections, Plaintiff Davis responds that, to the best of his recollection, he has not directly paid any money to Google. Plaintiff has, however, provided valuable consideration in the form of his personal information for the use of Google products, but Google unlawfully intercepted, collected data from, analyzed, and monetized Plaintiff's browsing activity conducted in private browsing mode, the value of which has been diminished and Google has used to its benefit to increase its profits and revenues from targeted advertising and improvements of Google's other products.

INTERROGATORY NO. 14:

Identify all California or other applicable laws that you contend render the information that you allege Google misappropriated from you your personal property. *See, e.g.*, SAC ¶ 137 ("The CCPA recognizes that consumers' personal data is a property right."); *id.* ¶ 274 ("As a result of Google's breach(es), Google was able to obtain the personal property of Plaintiffs and Class members and earn unjust profits"); *id.* ¶ 282 ("Plaintiffs and Class members have suffered injury-

1 in-fact, including the loss of money and/or property as a result of Google's ... practices, to wit, the
2 unauthorized disclosure and taking of the personal information which has value as demonstrated
3 by its use and sale by Google.").

4 **RESPONSE TO INTERROGATORY NO. 14:**

5 Plaintiff Davis objects to this Interrogatory on the basis that discovery has not closed, and
6 Google is still producing documents evidencing its unlawful interception, collection of data from,
7 analysis, and monetization of Plaintiff's (and class members') browsing activity conducted in
8 private browsing mode. Therefore, Plaintiff reserves his right to amend this response as discovery
9 proceeds.

10 Notwithstanding and subject to these objections, Plaintiff Davis responds that his Second
11 Amended Complaint and pleadings filed in this case identify California and other applicable laws
12 that render the information that Google misappropriated from Plaintiff his personal property. These
13 include: the California Constitution; the Federal Wiretap Act, 18 U.S.C. § 2510, *et seq.*; the
14 California Invasion of Privacy Act ("CIPA"), California Penal Code §§ 631 and 632; the California
15 Comprehensive Computer Data Access and Fraud Act ("CDAFA"), Cal. Penal Code § 502, *et seq.*;
16 the California Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code § 17200, *et seq.*; invasion
17 of privacy under California law; intrusion upon seclusion under California law; and breach of
18 contract under California law. Google's secret embedded code causes a secret, separate message
19 containing Plaintiff's communications and data at issue to Google's servers in California, and
20 Google's employees in California reuse those communications and data collected, bringing
21 Google's conduct under the laws of California. Additionally, Google's own Terms of Service
22 explicitly states "California law will govern all disputes arising out of or relating to these terms,
23 service specific additional terms, or any related services, regardless of conflict of laws rules. These
24 disputes will be resolved exclusively in the federal or state courts of Santa Clara County,
25 California, USA, and [users] and Google consent to personal jurisdiction in those courts." By
26 choosing California law for the resolution of disputes, Google has conceded that it is appropriate
27 to apply California law to its unlawful interception, collection of data from, analysis, and
28

1 monetization of Plaintiff's (and class members') browsing activity conducted in private browsing
2 mode.

3 **INTERROGATORY NO. 15:**

4 Identify and describe in detail any and all crimes of which YOU have been charged,
5 convicted, pleaded guilty, pleaded no contest, and/or have otherwise been held responsible. *See*,
6 *e.g.*, *Harris v. Vector Marketing Corp.*, 753 F.Supp.2d 996, 1015 (N.D. Cal. 2010) ("[t]he honesty
7 and credibility of a class representative is a relevant consideration when performing the adequacy
8 inquiry" (citation omitted)); *Del Campo v. American Corrective Counseling Servs., Inc.*, 2008 WL
9 2038047, at *4 (N.D. Cal. May 12, 2008) ("[I]t is self-evident that a Court must be concerned with
10 the integrity of individuals it designates as representatives for a large class of plaintiffs" (citation
11 omitted)); *Pena v. Taylor Farms Pacific, Inc.*, 305 F.R.D. 197, 215-16 (E.D. Cal. 2015) (finding
12 Plaintiff's conviction for identity theft near the time period relevant to her claims and failure to
13 initially disclose the conviction was "likely to cast doubt on her honesty and credibility," which
14 rendered her "not an adequate representative.").

15 **RESPONSE TO INTERROGATORY NO. 15:**

16 Plaintiff Davis objects to Interrogatory No. 15 as overly broad and irrelevant, insofar as it
17 requests information concerning any crimes for which Plaintiff was charged but were dismissed
18 or for which Plaintiff was otherwise exonerated. Plaintiff further objects to Interrogatory No. 15
19 as overly broad and irrelevant, insofar as it requests information concerning criminal convictions
20 for which more than ten years have passed since conviction or release from confinement,
21 whichever is later. Fed. R. Civ. P. 609(b).

22 Notwithstanding and subject to these objections, none; Plaintiff has never been charged,
23 convicted, pleaded guilty, pleaded no contest, and/or have otherwise been held responsible for any
24 crimes.
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VERIFICATION

Under penalties of perjury, I declare that I have read the foregoing Answers to Interrogatories, and that the Answers are true and correct to the best of my knowledge and belief.

By: _____

Printed Name: _____

Title: _____

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 2021, by _____, who has produced as identification _____, bearing number _____, expiring _____ and who did (did not) take an oath.

NOTARY PUBLIC SIGNATURE

Dated: July 30, 2021

MORGAN & MORGAN

/s/ John A. Yanchunis

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Facsimile: (310) 789-3150

Attorneys for Plaintiffs

PROOF OF SERVICE

I, Jennifer Cabezas, declare:

I am a citizen of the United States and employed in the County of Hillsborough, Florida. I am over the age of 18 and not a party to the within action; my business address is 201 N. Franklin St., 7th Floor, Tampa, FL 33602.

On July 30, 2021, I served the following document described as:

Plaintiff's Objections and Responses to Defendant's Fourth Set of Interrogatories

By electronic mail transmission from jcabezas@forthepeople.com on July 30, 2021, by transmitting a PDF format copy of such document to each person at the e-mail addresses listed below. The document was transmitted by electronic transmission and such transmission was reported as complete and without error:

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21 jonathantse@quinnemanuel.com

22 *Attorneys for Defendant*

23 Executed on July 30, 2021, at Tampa, Florida.

24 /s/ Jennifer Cabezas
25 Jennifer Cabezas
26
27
28

EXHIBIT 33

PLAINTIFF MONIQUE TRUJILLO'S OBJECTIONS AND RESPONSES TO DEFENDANT'S FOURTH SET OF INTERROGATORIES (NOS. 12-15)

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

CHASOM BROWN, WILLIAM BYATT,
JEREMY DAVIS, CHRISTOPHER
CASTILLO, and MONIQUE TRUJILLO
individually and on behalf of all other
similarly situated,

Plaintiffs,

v.

GOOGLE LLC,

Defendant.

Case No. 5:20-cv-03664-LHK-SVK

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**PLAINTIFF MONIQUE TRUJILLO'S OBJECTIONS AND RESPONSES
TO DEFENDANT'S FOURTH SET OF INTERROGATORIES (NOS. 12–15)**

Pursuant to Federal Rules of Civil Procedure 26 and 33, Plaintiff Monique Trujillo (“Trujillo”) hereby objects and responds to Defendant’s, Google LLC (“Google”), Fourth Set of Interrogatories (Nos. 12–15). These objections and responses are made solely for the purpose of and in relation to this action. In addition, the objections and responses set forth in this document are based on Plaintiff Trujillo’s knowledge, investigations, and analysis to date. As discovery proceeds, Plaintiff Trujillo may become aware of additional facts or evidence and her analysis of the case may change. Plaintiff Trujillo reserves all rights to supplement and amend her objections and responses accordingly.

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INTERROGATORY NO. 12:

Describe with particularity whether YOU agreed to all terms in the documents you allege are part of the contract between YOU and Google, *see* SAC ¶ 268, including Google’s TERMS OF SERVICE, CHROME TERMS OF SERVICE, Google’s PRIVACY POLICY, CHROME PRIVACY NOTICE, and the CHROME INCOGNITO NOTICE, and if YOU did not agree to all terms in these documents, identify all terms YOU did agree to.

RESPONSE TO INTERROGATORY NO. 12:

Plaintiff Trujillo objects to this Interrogatory to the extent it purports to suggest that her agreement with Google's Terms of Service, Chrome Terms of Service, Privacy Policy, Chrome Privacy Notice, and/or Chrome Incognito Notice is a necessary predicate for any claim (other than the contract claim) in this litigation. Plaintiff's allegations relate to Google's conduct of secretly and unlawfully intercepting, collecting data from, analyzing, and monetizing Plaintiff's (and class members') browsing activity conducted in private browsing mode, despite Google's representations (including without limitation in the Incognito private browsing mode) that private browsing mode was private and that Plaintiff's (and class members') private browsing information would not be collected by Google. Users did not need any Google account to browse privately, using Incognito mode or otherwise. Further, to the best of Plaintiff's knowledge, she has never logged into any Google accounts in Chrome when using Chrome's private browsing mode.

Notwithstanding and subject to these objections, Plaintiff Trujillo responds that the Chrome Privacy Notice promises Plaintiff and Class members that Google does not collect or use private browsing communications, including by explaining that "[y]ou can limit the information Chrome stores on your system by using incognito mode" and that, within Incognito mode, "Chrome won't store certain information, such as: Basic browsing history information like URLs, cached paged text, or IP addresses of pages linked from the websites [users] visit [and] Snapshots of pages that [users] visit." Additionally, Google's Privacy Policy, the Incognito Screen, and the "Search & Browse Privately" page similarly promise that users can control Google's collection and use of their browsing data including by enabling private browsing mode such as Incognito mode, and that Google would not collect and use private browsing data. Google breached those promises, and as a result was able to obtain the personal property of Plaintiff and class members and earn unjust profits.

INTERROGATORY NO. 13:

Identify and describe with particularity any money that you have paid to Google.

RESPONSE TO INTERROGATORY NO. 13:

Plaintiff Trujillo objects to this Interrogatory to the extent it purports to suggest that monetary payment to Google is a necessary predicate for any claim in this litigation. Plaintiff and class members provided valuable consideration in the form of their respective personal information they agreed to share with Google in non-private browsing mode, which has ascertainable and demonstrated value by its use and sale by Google. Because Google unlawfully intercepted, collected data from, analyzed, and monetized Plaintiff's (and class members') browsing activity conducted in private browsing mode, this private and personally identifiable data and content has been diminished in value, and Plaintiff and class members have been deprived of their right to control the dissemination and use of their respective personal (and private) information and communications. Plaintiff Trujillo further objects to this Interrogatory as irrelevant to the extent it seeks information concerning money paid not related to private browsing.

Notwithstanding and subject to these objections, Plaintiff Trujillo responds that, to the best of her recollection, she has not directly paid any money to Google. Plaintiff has, however, provided valuable consideration in the form of her personal information for the use of Google products, but Google unlawfully intercepted, collected data from, analyzed, and monetized Plaintiff's browsing activity conducted in private browsing mode, the value of which has been diminished and Google has used to its benefit to increase its profits and revenues from targeted advertising and improvements of Google's other products.

INTERROGATORY NO. 14:

Identify all California or other applicable laws that you contend render the information that you allege Google misappropriated from you your personal property. *See, e.g.*, SAC ¶ 137 ("The CCPA recognizes that consumers' personal data is a property right."); *id.* ¶ 274 ("As a result of Google's breach(es), Google was able to obtain the personal property of Plaintiffs and Class members and earn unjust profits"); *id.* ¶ 282 ("Plaintiffs and Class members have suffered injury-

1 in-fact, including the loss of money and/or property as a result of Google's ... practices, to wit, the
2 unauthorized disclosure and taking of the personal information which has value as demonstrated
3 by its use and sale by Google.").

4 **RESPONSE TO INTERROGATORY NO. 14:**

5 Plaintiff Trujillo objects to this Interrogatory on the basis that discovery has not closed,
6 and Google is still producing documents evidencing its unlawful interception, collection of data
7 from, analysis, and monetization of Plaintiff's (and class members') browsing activity conducted
8 in private browsing mode. Therefore, Plaintiff reserves her right to amend this response as
9 discovery proceeds.

10 Notwithstanding and subject to these objections, Plaintiff Trujillo responds that her Second
11 Amended Complaint and pleadings filed in this case identify California and other applicable laws
12 that render the information that Google misappropriated from Plaintiff her personal property.
13 These include: the California Constitution; the Federal Wiretap Act, 18 U.S.C. § 2510, *et seq.*; the
14 California Invasion of Privacy Act ("CIPA"), California Penal Code §§ 631 and 632; the California
15 Comprehensive Computer Data Access and Fraud Act ("CDAFA"), Cal. Penal Code § 502, *et seq.*;
16 the California Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code § 17200, *et seq.*; invasion
17 of privacy under California law; intrusion upon seclusion under California law; and breach of
18 contract under California law. Google's secret embedded code causes a secret, separate message
19 containing Plaintiff's communications and data at issue to Google's servers in California, and
20 Google's employees in California reuse those communications and data collected, bringing
21 Google's conduct under the laws of California. Additionally, Google's own Terms of Service
22 explicitly states "California law will govern all disputes arising out of or relating to these terms,
23 service specific additional terms, or any related services, regardless of conflict of laws rules. These
24 disputes will be resolved exclusively in the federal or state courts of Santa Clara County,
25 California, USA, and [users] and Google consent to personal jurisdiction in those courts." By
26 choosing California law for the resolution of disputes, Google has conceded that it is appropriate
27 to apply California law to its unlawful interception, collection of data from, analysis, and
28

1 monetization of Plaintiff's (and class members') browsing activity conducted in private browsing
2 mode.

3 **INTERROGATORY NO. 15:**

4 Identify and describe in detail any and all crimes of which YOU have been charged,
5 convicted, pleaded guilty, pleaded no contest, and/or have otherwise been held responsible. *See*,
6 *e.g.*, *Harris v. Vector Marketing Corp.*, 753 F.Supp.2d 996, 1015 (N.D. Cal. 2010) ("[t]he honesty
7 and credibility of a class representative is a relevant consideration when performing the adequacy
8 inquiry" (citation omitted)); *Del Campo v. American Corrective Counseling Servs., Inc.*, 2008 WL
9 2038047, at *4 (N.D. Cal. May 12, 2008) ("[I]t is self-evident that a Court must be concerned with
10 the integrity of individuals it designates as representatives for a large class of plaintiffs" (citation
11 omitted)); *Pena v. Taylor Farms Pacific, Inc.*, 305 F.R.D. 197, 215-16 (E.D. Cal. 2015) (finding
12 Plaintiff's conviction for identity theft near the time period relevant to her claims and failure to
13 initially disclose the conviction was "likely to cast doubt on her honesty and credibility," which
14 rendered her "not an adequate representative.").

15 **RESPONSE TO INTERROGATORY NO. 15:**

16 Plaintiff Trujillo objects to Interrogatory No. 15 as overly broad and irrelevant, insofar as
17 it requests information concerning any crimes for which Plaintiff was charged but were dismissed
18 or for which Plaintiff was otherwise exonerated. Plaintiff further objects to Interrogatory No. 15
19 as overly broad and irrelevant, insofar as it requests information concerning criminal convictions
20 for which more than ten years have passed since conviction or release from confinement,
21 whichever is later. Fed. R. Civ. P. 609(b).

22 Notwithstanding and subject to these objections, none; Plaintiff has never been charged,
23 convicted, pleaded guilty, pleaded no contest, and/or have otherwise been held responsible for any
24 crimes.
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VERIFICATION

Under penalties of perjury, I declare that I have read the foregoing Answers to Interrogatories, and that the Answers are true and correct to the best of my knowledge and belief.

By: _____

Printed Name: _____

Title: _____

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 2021, by _____, who has produced as identification _____, bearing number _____, expiring _____ and who did (did not) take an oath.

NOTARY PUBLIC SIGNATURE

1 Dated: July 30, 2021

MORGAN & MORGAN

2 /s/ John A. Yanchunis

3 John A. Yanchunis (*pro hac vice*)
4 Ryan J. McGee (*pro hac vice*)
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28 *Attorneys for Plaintiffs*

PROOF OF SERVICE

I, Jennifer Cabezas, declare:

I am a citizen of the United States and employed in the County of Hillsborough, Florida. I am over the age of 18 and not a party to the within action; my business address is 201 N. Franklin St., 7th Floor, Tampa, FL 33602.

On July 30, 2021, I served the following document described as:

Plaintiff's Objections and Responses to Defendant's Fourth Set of Interrogatories

By electronic mail transmission from jcabezas@forthepeople.com on July 30, 2021, by transmitting a PDF format copy of such document to each person at the e-mail addresses listed below. The document was transmitted by electronic transmission and such transmission was reported as complete and without error:

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21 jonathantse@quinnemanuel.com

22 *Attorneys for Defendant*

23 Executed on July 30, 2021, at Tampa, Florida.

24 /s/ Jennifer Cabezas
25 Jennifer Cabezas
26
27
28

EXHIBIT 34

PLAINTIFF CHASOM BROWN'S VERIFIED OBJECTIONS AND RESPONSES TO DEFENDANT'S FIFTH SET OF INTERROGATORIES (NO. 16)

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

CHASOM BROWN, WILLIAM BYATT,
JEREMY DAVIS, CHRISTOPHER
CASTILLO, and MONIQUE TRUJILLO
individually and on behalf of all other
similarly situated,

Plaintiffs,

v.

GOOGLE LLC,

Defendant.

Case No. 5:20-cv-03664-LHK-SVK

**PLAINTIFF CHASOM BROWN'S VERIFIED OBJECTIONS AND RESPONSES
TO DEFENDANT'S FIFTH SET OF INTERROGATORIES (NO. 16)**

Pursuant to Federal Rules of Civil Procedure 26 and 33, Plaintiff Chasom Brown ("Brown") hereby objects and responds to Defendant's, Google LLC ("Google"), Fifth Set of Interrogatories (No. 16). These objections and responses are made solely for the purpose of and in relation to this action. In addition, the objections and responses set forth in this document are based on Plaintiff Brown's knowledge, investigations, and analysis to date. As discovery proceeds, Plaintiff Brown may become aware of additional facts or evidence and his analysis of the case may change. Plaintiff Brown reserves all rights to supplement and amend his objections and responses accordingly.

INTERROGATORY NO. 16:

Describe with particularity how Google's actions alleged in your COMPLAINT "diminished" the value of YOUR DATA, as the term "diminished" is used in YOUR objections and responses to Google's Requests for Admission Nos. 26–28 and YOUR objections and responses to Google's Interrogatory No. 13.

RESPONSE TO INTERROGATORY NO. 16:

Plaintiff objects to this as a premature contention Interrogatory and a premature request for expert-related discovery. Discovery is ongoing, Google has delayed its production of documents and information in this matter, and the deadlines for Plaintiffs to disclose any expert reports and to file their motion for class certification is months away. Thus, Plaintiff reserves the right to amend the response to this request as discovery proceeds and additional facts are revealed through the discovery process. Plaintiff further objects to this Request to the extent it seeks information protected by the attorney-client, work-product privileges, and seeks the mental impressions of counsel.

Notwithstanding and subject to these objections, Plaintiff responds that by collecting Plaintiff's data while he was in private browsing mode, Google has diminished the value of this data to Plaintiff by the amount that, but for Google's actions, at least Google would have been willing to pay Plaintiff for access to that data while he was in private browsing mode. As both fact and expert discovery are ongoing, Plaintiff cannot place a specific value on the extent to which Google's actions have diminished the value of Plaintiff's data that Google impermissibly collected while Plaintiff was in private browsing mode; however, it should be uncontroversial this data is valuable to Google, otherwise Google would not have collected it.

Google has demonstrated a willingness to pay users for their data. For example, Ipsos Screenwise Panel (a consumer research study conducted by Ipsos for Google) provides users rewards and, in exchange, Ipsos collects information on how users use the internet. Participants can earn \$20 for participating in the study, an additional \$100 value if they join and install a special WiFi router, and up to \$16 for each household member (aged 13 or older) who joins with their device. In another example, Google provides up to \$1.00 in value weekly for users who complete Google's Opinion Rewards surveys.

Companies other than Google have demonstrated a similar willingness to pay consumers for their data. Additional examples include: Nielson Computer & Mobile Panel pays up to \$50 per year for passive data collection of a user's internet behavior; MobileXpression Panel similarly

1 provides compensation to users for the passive collection of their data, including browsing and
2 purchasing behavior; UpVoice pays a \$5 signing bonus and up to \$75 in a user's first year to collect
3 data related to advertisements displayed during web browsing; SavvyConnect pays \$5 per device
4 per month to passively track data from users' devices as they browse the web; PermissionResearch
5 provides monetary opportunities for monitoring internet browsing and purchasing activity
6 passively; Killi passively monitors, among other things, users' internet browsing activity and
7 purchases for approximately \$1 to \$4 per month, as well as referral bonuses; Rewards by
8 Foursquare pays users for access to their device data used for market research purposes; Mobile
9 Performance Meter pays users to passively track their website use for market research purposes;
10 Cocoon MDR pays users 70% of the profits Cocoon derives from collecting and selling their
11 browsing data; Imagine BC gives users the option to passive track and aggregate their browsing
12 activity and license that data to others, including advertisers.

VERIFICATION

Under penalties of perjury, I declare that I have read the foregoing Answers to Interrogatories, and that the Answers are true and correct to the best of my knowledge and belief.

By: _____

Printed Name: _____

Title: _____

STATE OF _____

COUNTY OF _____

1 Dated: September 20, 2021

MORGAN & MORGAN

2 /s/ John A. Yanchunis

3 John A. Yanchunis (*pro hac vice*)
4 Ryan J. McGee (*pro hac vice*)
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28 *Attorneys for Plaintiffs*

PROOF OF SERVICE

I, Jennifer Cabezas, declare:

I am a citizen of the United States and employed in the County of Hillsborough, Florida. I am over the age of 18 and not a party to the within action; my business address is 201 N. Franklin St., 7th Floor, Tampa, FL 33602.

On September 20, 2021, I served the following document described as:

Plaintiff's Objections and Responses to Defendant's Fifth Set of Interrogatories

By electronic mail transmission from jcabezas@forthepeople.com on September 20, 2021, by transmitting a PDF format copy of such document to each person at the e-mail addresses listed below. The document was transmitted by electronic transmission and such transmission was reported as complete and without error:

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21 jonathantse@quinnemanuel.com

22 *Attorneys for Defendant*

23 Executed on September 20, 2021, at Tampa, Florida.

24 /s/ Jennifer Cabezas
25 Jennifer Cabezas
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EXHIBIT 35

PLAINTIFF WILLIAM BYATT'S VERIFIED OBJECTIONS AND RESPONSES TO DEFENDANT'S FIFTH SET OF INTERROGATORIES (NO. 16)

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

CHASOM BROWN, WILLIAM BYATT,
JEREMY DAVIS, CHRISTOPHER
CASTILLO, and MONIQUE TRUJILLO
individually and on behalf of all other
similarly situated,

Plaintiffs,

v.

GOOGLE LLC,

Defendant.

Case No. 5:20-cv-03664-LHK-SVK

**PLAINTIFF WILLIAM BYATT'S VERIFIED OBJECTIONS AND RESPONSES
TO DEFENDANT'S FIFTH SET OF INTERROGATORIES (NO. 16)**

Pursuant to Federal Rules of Civil Procedure 26 and 33, Plaintiff William Byatt ("Byatt") hereby objects and responds to Defendant's, Google LLC ("Google"), Fifth Set of Interrogatories (No. 16). These objections and responses are made solely for the purpose of and in relation to this action. In addition, the objections and responses set forth in this document are based on Plaintiff Byatt's knowledge, investigations, and analysis to date. As discovery proceeds, Plaintiff Byatt may become aware of additional facts or evidence and his analysis of the case may change. Plaintiff Byatt reserves all rights to supplement and amend his objections and responses accordingly.

INTERROGATORY NO. 16:

Describe with particularity how Google's actions alleged in your COMPLAINT "diminished" the value of YOUR DATA, as the term "diminished" is used in YOUR objections and responses to Google's Requests for Admission Nos. 26–28 and YOUR objections and responses to Google's Interrogatory No. 13.

RESPONSE TO INTERROGATORY NO. 16:

Plaintiff objects to this as a premature contention Interrogatory and a premature request for expert-related discovery. Discovery is ongoing, Google has delayed its production of documents

1 and information in this matter, and the deadlines for Plaintiffs to disclose any expert reports and
2 to file their motion for class certification is months away. Thus, Plaintiff reserves the right to
3 amend the response to this request as discovery proceeds and additional facts are revealed through
4 the discovery process. Plaintiff further objects to this Request to the extent it seeks information
5 protected by the attorney-client, work-product privileges, and seeks the mental impressions of
6 counsel.

7
8 Notwithstanding and subject to these objections, Plaintiff responds that by collecting
9 Plaintiff's data while he was in private browsing mode, Google has diminished the value of this
10 data to Plaintiff by the amount that, but for Google's actions, at least Google would have been
11 willing to pay Plaintiff for access to that data while he was in private browsing mode. As both fact
12 and expert discovery are ongoing, Plaintiff cannot place a specific value on the extent to which
13 Google's actions have diminished the value of Plaintiff's data that Google impermissibly collected
14 while Plaintiff was in private browsing mode; however, it should be uncontroversial this data is
15 valuable to Google, otherwise Google would not have collected it.

16 Google has demonstrated a willingness to pay users for their data. For example, Ipsos
17 Screenwise Panel (a consumer research study conducted by Ipsos for Google) provides users
18 rewards and, in exchange, Ipsos collects information on how users use the internet. Participants
19 can earn \$20 for participating in the study, an additional \$100 value if they join and install a special
20 WiFi router, and up to \$16 for each household member (aged 13 or older) who joins with their
21 device. In another example, Google provides up to \$1.00 in value weekly for users who complete
22 Google's Opinion Rewards surveys.

23 Companies other than Google have demonstrated a similar willingness to pay consumers
24 for their data. Additional examples include: Nielson Computer & Mobile Panel pays up to \$50 per
25 year for passive data collection of a user's internet behavior; MobileXpression Panel similarly
26 provides compensation to users for the passive collection of their data, including browsing and
27 purchasing behavior; UpVoice pays a \$5 signing bonus and up to \$75 in a user's first year to collect
28 data related to advertisements displayed during web browsing; SavvyConnect pays \$5 per device

1 per month to passively track data from users' devices as they browse the web; PermissionResearch
2 provides monetary opportunities for monitoring internet browsing and purchasing activity
3 passively; Killi passively monitors, among other things, users' internet browsing activity and
4 purchases for approximately \$1 to \$4 per month, as well as referral bonuses; Rewards by
5 Foursquare pays users for access to their device data used for market research purposes; Mobile
6 Performance Meter pays users to passively track their website use for market research purposes;
7 Cocoon MDR pays users 70% of the profits Cocoon derives from collecting and selling their
8 browsing data; Imagine BC gives users the option to passive track and aggregate their browsing
9 activity and license that data to others, including advertisers.
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VERIFICATION

Under penalties of perjury, I declare that I have read the foregoing Answers to Interrogatories, and that the Answers are true and correct to the best of my knowledge and belief.

By: _____

Printed Name: _____

Title: _____

STATE OF _____

COUNTY OF _____

Dated: September 20, 2021

MORGAN & MORGAN

/s/ John A. Yanchunis

John A. Yanchunis (*pro hac vice*)
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Facsimile: (310) 789-3150

Attorneys for Plaintiffs

PROOF OF SERVICE

I, Jennifer Cabezas, declare:

I am a citizen of the United States and employed in the County of Hillsborough, Florida. I am over the age of 18 and not a party to the within action; my business address is 201 N. Franklin St., 7th Floor, Tampa, FL 33602.

On September 20, 2021, I served the following document described as:

Plaintiff's Objections and Responses to Defendant's Fifth Set of Interrogatories

By electronic mail transmission from jcabezas@forthepeople.com on September 20, 2021, by transmitting a PDF format copy of such document to each person at the e-mail addresses listed below. The document was transmitted by electronic transmission and such transmission was reported as complete and without error:

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20 Fax: 415-875-6700
21 jonathantse@quinnemanuel.com

22 *Attorneys for Defendant*

23 Executed on September 20, 2021, at Tampa, Florida.

24 /s/ Jennifer Cabezas
25 Jennifer Cabezas
26
27
28

EXHIBIT 36

PLAINTIFF CHRISTOPHER CASTILLO'S VERIFIED OBJECTIONS AND RESPONSES TO DEFENDANT'S FIFTH SET OF INTERROGATORIES (NO. 16)

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

CHASOM BROWN, WILLIAM BYATT,
JEREMY DAVIS, CHRISTOPHER
CASTILLO, and MONIQUE TRUJILLO
individually and on behalf of all other
similarly situated,

Plaintiffs,

v.

GOOGLE LLC,

Defendant.

Case No. 5:20-cv-03664-LHK-SVK

**PLAINTIFF CHRISTOPHER CASTILLO'S VERIFIED OBJECTIONS AND RESPONSES
TO DEFENDANT'S FIFTH SET OF INTERROGATORIES (NO. 16)**

Pursuant to Federal Rules of Civil Procedure 26 and 33, Plaintiff Christopher Castillo ("Castillo") hereby objects and responds to Defendant's, Google LLC ("Google"), Fifth Set of Interrogatories (No. 16). These objections and responses are made solely for the purpose of and in relation to this action. In addition, the objections and responses set forth in this document are based on Plaintiff Castillo's knowledge, investigations, and analysis to date. As discovery proceeds, Plaintiff Castillo may become aware of additional facts or evidence and his analysis of the case may change. Plaintiff Castillo reserves all rights to supplement and amend his objections and responses accordingly.

INTERROGATORY NO. 16:

Describe with particularity how Google's actions alleged in your COMPLAINT "diminished" the value of YOUR DATA, as the term "diminished" is used in YOUR objections and responses to Google's Requests for Admission Nos. 26–28 and YOUR objections and responses to Google's Interrogatory No. 13.

RESPONSE TO INTERROGATORY NO. 16:

Plaintiff objects to this as a premature contention Interrogatory and a premature request for expert-related discovery. Discovery is ongoing, Google has delayed its production of documents and information in this matter, and the deadlines for Plaintiffs to disclose any expert reports and to file their motion for class certification is months away. Thus, Plaintiff reserves the right to amend the response to this request as discovery proceeds and additional facts are revealed through the discovery process. Plaintiff further objects to this Request to the extent it seeks information protected by the attorney-client, work-product privileges, and seeks the mental impressions of counsel.

Notwithstanding and subject to these objections, Plaintiff responds that by collecting Plaintiff's data while he was in private browsing mode, Google has diminished the value of this data to Plaintiff by the amount that, but for Google's actions, at least Google would have been willing to pay Plaintiff for access to that data while he was in private browsing mode. As both fact and expert discovery are ongoing, Plaintiff cannot place a specific value on the extent to which Google's actions have diminished the value of Plaintiff's data that Google impermissibly collected while Plaintiff was in private browsing mode; however, it should be uncontroversial this data is valuable to Google, otherwise Google would not have collected it.

Google has demonstrated a willingness to pay users for their data. For example, Ipsos Screenwise Panel (a consumer research study conducted by Ipsos for Google) provides users rewards and, in exchange, Ipsos collects information on how users use the internet. Participants can earn \$20 for participating in the study, an additional \$100 value if they join and install a special WiFi router, and up to \$16 for each household member (aged 13 or older) who joins with their device. In another example, Google provides up to \$1.00 in value weekly for users who complete Google's Opinion Rewards surveys.

Companies other than Google have demonstrated a similar willingness to pay consumers for their data. Additional examples include: Nielson Computer & Mobile Panel pays up to \$50 per year for passive data collection of a user's internet behavior; MobileXpression Panel similarly

1 provides compensation to users for the passive collection of their data, including browsing and
2 purchasing behavior; UpVoice pays a \$5 signing bonus and up to \$75 in a user's first year to collect
3 data related to advertisements displayed during web browsing; SavvyConnect pays \$5 per device
4 per month to passively track data from users' devices as they browse the web; PermissionResearch
5 provides monetary opportunities for monitoring internet browsing and purchasing activity
6 passively; Killi passively monitors, among other things, users' internet browsing activity and
7 purchases for approximately \$1 to \$4 per month, as well as referral bonuses; Rewards by
8 Foursquare pays users for access to their device data used for market research purposes; Mobile
9 Performance Meter pays users to passively track their website use for market research purposes;
10 Cocoon MDR pays users 70% of the profits Cocoon derives from collecting and selling their
11 browsing data; Imagine BC gives users the option to passive track and aggregate their browsing
12 activity and license that data to others, including advertisers.

VERIFICATION

Under penalties of perjury, I declare that I have read the foregoing Answers to Interrogatories, and that the Answers are true and correct to the best of my knowledge and belief.

By: _____

Printed Name: _____

Title: _____

STATE OF _____

COUNTY OF _____

Dated: September 20, 2021

MORGAN & MORGAN

/s/ John A. Yanchunis

John A. Yanchunis (*pro hac vice*)
Ryan J. McGee (*pro hac vice*)
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Los Angeles, California 90067
Telephone: (310) 789-3100
Facsimile: (310) 789-3150

Attorneys for Plaintiffs

PROOF OF SERVICE

I, Jennifer Cabezas, declare:

I am a citizen of the United States and employed in the County of Hillsborough, Florida. I am over the age of 18 and not a party to the within action; my business address is 201 N. Franklin St., 7th Floor, Tampa, FL 33602.

On September 20, 2021, I served the following document described as:

Plaintiff's Objections and Responses to Defendant's Fifth Set of Interrogatories

By electronic mail transmission from jcabezas@forthepeople.com on September 20, 2021, by transmitting a PDF format copy of such document to each person at the e-mail addresses listed below. The document was transmitted by electronic transmission and such transmission was reported as complete and without error:

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22 *Attorneys for Defendant*

23 Executed on September 20, 2021, at Tampa, Florida.

24 /s/ Jennifer Cabezas
25 Jennifer Cabezas
26
27
28

EXHIBIT 37

PLAINTIFF JEREMY DAVIS' VERIFIED OBJECTIONS AND RESPONSES TO DEFENDANT'S FIFTH SET OF INTERROGATORIES (NO. 16)

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

CHASOM BROWN, WILLIAM BYATT,
JEREMY DAVIS, CHRISTOPHER
CASTILLO, and MONIQUE TRUJILLO
individually and on behalf of all other
similarly situated,

Plaintiffs,

v.

GOOGLE LLC,

Defendant.

Case No. 5:20-cv-03664-LHK-SVK

**PLAINTIFF JEREMY DAVIS' VERIFIED OBJECTIONS AND RESPONSES
TO DEFENDANT'S FIFTH SET OF INTERROGATORIES (NO. 16)**

Pursuant to Federal Rules of Civil Procedure 26 and 33, Plaintiff Jeremy Davis ("Davis") hereby objects and responds to Defendant's, Google LLC ("Google"), Fifth Set of Interrogatories (No. 16). These objections and responses are made solely for the purpose of and in relation to this action. In addition, the objections and responses set forth in this document are based on Plaintiff Davis' knowledge, investigations, and analysis to date. As discovery proceeds, Plaintiff Davis may become aware of additional facts or evidence and his analysis of the case may change. Plaintiff Davis reserves all rights to supplement and amend his objections and responses accordingly.

INTERROGATORY NO. 16:

Describe with particularity how Google's actions alleged in your COMPLAINT "diminished" the value of YOUR DATA, as the term "diminished" is used in YOUR objections and responses to Google's Requests for Admission Nos. 26–28 and YOUR objections and responses to Google's Interrogatory No. 13.

RESPONSE TO INTERROGATORY NO. 16:

Plaintiff objects to this as a premature contention Interrogatory and a premature request for expert-related discovery. Discovery is ongoing, Google has delayed its production of documents

1 and information in this matter, and the deadlines for Plaintiffs to disclose any expert reports and
2 to file their motion for class certification is months away. Thus, Plaintiff reserves the right to
3 amend the response to this request as discovery proceeds and additional facts are revealed through
4 the discovery process. Plaintiff further objects to this Request to the extent it seeks information
5 protected by the attorney-client, work-product privileges, and seeks the mental impressions of
6 counsel.

7
8 Notwithstanding and subject to these objections, Plaintiff responds that by collecting
9 Plaintiff's data while he was in private browsing mode, Google has diminished the value of this
10 data to Plaintiff by the amount that, but for Google's actions, at least Google would have been
11 willing to pay Plaintiff for access to that data while he was in private browsing mode. As both fact
12 and expert discovery are ongoing, Plaintiff cannot place a specific value on the extent to which
13 Google's actions have diminished the value of Plaintiff's data that Google impermissibly collected
14 while Plaintiff was in private browsing mode; however, it should be uncontroversial this data is
15 valuable to Google, otherwise Google would not have collected it.

16 Google has demonstrated a willingness to pay users for their data. For example, Ipsos
17 Screenwise Panel (a consumer research study conducted by Ipsos for Google) provides users
18 rewards and, in exchange, Ipsos collects information on how users use the internet. Participants
19 can earn \$20 for participating in the study, an additional \$100 value if they join and install a special
20 WiFi router, and up to \$16 for each household member (aged 13 or older) who joins with their
21 device. In another example, Google provides up to \$1.00 in value weekly for users who complete
22 Google's Opinion Rewards surveys.

23 Companies other than Google have demonstrated a similar willingness to pay consumers
24 for their data. Additional examples include: Nielson Computer & Mobile Panel pays up to \$50 per
25 year for passive data collection of a user's internet behavior; MobileXpression Panel similarly
26 provides compensation to users for the passive collection of their data, including browsing and
27 purchasing behavior; UpVoice pays a \$5 signing bonus and up to \$75 in a user's first year to collect
28 data related to advertisements displayed during web browsing; SavvyConnect pays \$5 per device

1 per month to passively track data from users' devices as they browse the web; PermissionResearch
2 provides monetary opportunities for monitoring internet browsing and purchasing activity
3 passively; Killi passively monitors, among other things, users' internet browsing activity and
4 purchases for approximately \$1 to \$4 per month, as well as referral bonuses; Rewards by
5 Foursquare pays users for access to their device data used for market research purposes; Mobile
6 Performance Meter pays users to passively track their website use for market research purposes;
7 Cocoon MDR pays users 70% of the profits Cocoon derives from collecting and selling their
8 browsing data; Imagine BC gives users the option to passive track and aggregate their browsing
9 activity and license that data to others, including advertisers.
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VERIFICATION

Under penalties of perjury, I declare that I have read the foregoing Answers to Interrogatories, and that the Answers are true and correct to the best of my knowledge and belief.

By: _____

Printed Name: _____

Title: _____

STATE OF _____

COUNTY OF _____

Dated: September 20, 2021

MORGAN & MORGAN

/s/ John A. Yanchunis

John A. Yanchunis (*pro hac vice*)
Ryan J. McGee (*pro hac vice*)
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Telephone: (310) 789-3100
Facsimile: (310) 789-3150

Attorneys for Plaintiffs

PROOF OF SERVICE

I, Jennifer Cabezas, declare:

I am a citizen of the United States and employed in the County of Hillsborough, Florida. I am over the age of 18 and not a party to the within action; my business address is 201 N. Franklin St., 7th Floor, Tampa, FL 33602.

On September 20, 2021, I served the following document described as:

Plaintiff's Objections and Responses to Defendant's Fifth Set of Interrogatories

By electronic mail transmission from jcabezas@forthepeople.com on September 20, 2021, by transmitting a PDF format copy of such document to each person at the e-mail addresses listed below. The document was transmitted by electronic transmission and such transmission was reported as complete and without error:

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Attorney for Defendant

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Viola Trebicka
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19 Tel: 415-875-6600
20 Fax: 415-875-6700
21 jonathantse@quinnemanuel.com

22 *Attorneys for Defendant*

23 Executed on September 20, 2021, at Tampa, Florida.

24 /s/ Jennifer Cabezas
25 Jennifer Cabezas
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EXHIBIT 38

PLAINTIFF MONIQUE TRUJILLO'S VERIFIED OBJECTIONS AND RESPONSES TO DEFENDANT'S FIFTH SET OF INTERROGATORIES (NO. 16)

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

CHASOM BROWN, WILLIAM BYATT,
JEREMY DAVIS, CHRISTOPHER
CASTILLO, and MONIQUE TRUJILLO
individually and on behalf of all other
similarly situated,

Plaintiffs,

v.

GOOGLE LLC,

Defendant.

Case No. 5:20-cv-03664-LHK-SVK

**PLAINTIFF MONIQUE TRUJILLO'S VERIFIED OBJECTIONS AND RESPONSES
TO DEFENDANT'S FIFTH SET OF INTERROGATORIES (NO. 16)**

Pursuant to Federal Rules of Civil Procedure 26 and 33, Plaintiff Monique Trujillo ("Trujillo") hereby objects and responds to Defendant's, Google LLC ("Google"), Fifth Set of Interrogatories (No. 16). These objections and responses are made solely for the purpose of and in relation to this action. In addition, the objections and responses set forth in this document are based on Plaintiff Trujillo's knowledge, investigations, and analysis to date. As discovery proceeds, Plaintiff Trujillo may become aware of additional facts or evidence and her analysis of the case may change. Plaintiff Trujillo reserves all rights to supplement and amend her objections and responses accordingly.

INTERROGATORY NO. 16:

Describe with particularity how Google's actions alleged in your COMPLAINT "diminished" the value of YOUR DATA, as the term "diminished" is used in YOUR objections and responses to Google's Requests for Admission Nos. 26–28 and YOUR objections and responses to Google's Interrogatory No. 13.

RESPONSE TO INTERROGATORY NO. 16:

Plaintiff objects to this as a premature contention Interrogatory and a premature request for expert-related discovery. Discovery is ongoing, Google has delayed its production of documents and information in this matter, and the deadlines for Plaintiffs to disclose any expert reports and to file their motion for class certification is months away. Thus, Plaintiff reserves the right to amend the response to this request as discovery proceeds and additional facts are revealed through the discovery process. Plaintiff further objects to this Request to the extent it seeks information protected by the attorney-client, work-product privileges, and seeks the mental impressions of counsel.

Notwithstanding and subject to these objections, Plaintiff responds that by collecting Plaintiff's data while she was in private browsing mode, Google has diminished the value of this data to Plaintiff by the amount that, but for Google's actions, at least Google would have been willing to pay Plaintiff for access to that data while she was in private browsing mode. As both fact and expert discovery are ongoing, Plaintiff cannot place a specific value on the extent to which Google's actions have diminished the value of Plaintiff's data that Google impermissibly collected while Plaintiff was in private browsing mode; however, it should be uncontroversial this data is valuable to Google, otherwise Google would not have collected it.

Google has demonstrated a willingness to pay users for their data. For example, Ipsos Screenwise Panel (a consumer research study conducted by Ipsos for Google) provides users rewards and, in exchange, Ipsos collects information on how users use the internet. Participants can earn \$20 for participating in the study, an additional \$100 value if they join and install a special WiFi router, and up to \$16 for each household member (aged 13 or older) who joins with their device. In another example, Google provides up to \$1.00 in value weekly for users who complete Google's Opinion Rewards surveys.

Companies other than Google have demonstrated a similar willingness to pay consumers for their data. Additional examples include: Nielson Computer & Mobile Panel pays up to \$50 per year for passive data collection of a user's internet behavior; MobileXpression Panel similarly

1 provides compensation to users for the passive collection of their data, including browsing and
2 purchasing behavior; UpVoice pays a \$5 signing bonus and up to \$75 in a user's first year to collect
3 data related to advertisements displayed during web browsing; SavvyConnect pays \$5 per device
4 per month to passively track data from users' devices as they browse the web; PermissionResearch
5 provides monetary opportunities for monitoring internet browsing and purchasing activity
6 passively; Killi passively monitors, among other things, users' internet browsing activity and
7 purchases for approximately \$1 to \$4 per month, as well as referral bonuses; Rewards by
8 Foursquare pays users for access to their device data used for market research purposes; Mobile
9 Performance Meter pays users to passively track their website use for market research purposes;
10 Cocoon MDR pays users 70% of the profits Cocoon derives from collecting and selling their
11 browsing data; Imagine BC gives users the option to passive track and aggregate their browsing
12 activity and license that data to others, including advertisers.
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VERIFICATION

Under penalties of perjury, I declare that I have read the foregoing Answers to Interrogatories, and that the Answers are true and correct to the best of my knowledge and belief.

By: _____

Printed Name: _____

Title: _____

STATE OF _____

COUNTY OF _____

Dated: September 20, 2021

MORGAN & MORGAN

/s/ John A. Yanchunis

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Attorneys for Plaintiffs

PROOF OF SERVICE

I, Jennifer Cabezas, declare:

I am a citizen of the United States and employed in the County of Hillsborough, Florida. I am over the age of 18 and not a party to the within action; my business address is 201 N. Franklin St., 7th Floor, Tampa, FL 33602.

On September 20, 2021, I served the following document described as:

Plaintiff's Objections and Responses to Defendant's Fifth Set of Interrogatories

By electronic mail transmission from jcabezas@forthepeople.com on September 20, 2021, by transmitting a PDF format copy of such document to each person at the e-mail addresses listed below. The document was transmitted by electronic transmission and such transmission was reported as complete and without error:

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22 *Attorneys for Defendant*

23 Executed on September 20, 2021, at Tampa, Florida.

24 /s/ Jennifer Cabezas
25 Jennifer Cabezas
26
27
28

EXHIBIT 39

PLAINTIFFS' OBJECTIONS AND RESPONSES TO DEFENDANT'S SIXTH SET OF INTERROGATORIES (NO. 17)

**Redacted Version of
Document Sought to be
Sealed**

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

CHASOM BROWN, WILLIAM BYATT,
JEREMY DAVIS, CHRISTOPHER
CASTILLO, and MONIQUE TRUJILLO
individually and on behalf of all other
similarly situated,

Plaintiffs,

v.

GOOGLE LLC,

Defendant.

Case No. 4:20-cv-03664-YGR-SVK

**PLAINTIFFS' OBJECTIONS AND RESPONSES TO
DEFENDANT'S SIXTH SET OF INTERROGATORIES (NO. 17)**

Pursuant to Federal Rules of Civil Procedure 26 and 33, Plaintiffs Chasom Brown, William Byatt, Jeremy Davis, Christopher Castillo, and Monique Trujillo ("Plaintiffs") hereby object and respond to Defendant's, Google LLC ("Google"), Sixth Set of Interrogatories (No. 17). These objections and responses are made solely for the purpose of and in relation to this action. In addition, the objections and responses set forth in this document are based on Plaintiffs' knowledge, investigations, and analysis to date. Plaintiffs may become aware of additional facts or evidence and their analysis of the case may change. Plaintiffs reserve all rights to supplement and amend their objections and responses accordingly.

INTERROGATORY NO. 17:

Identify all facts supporting each cause of action in your Complaint, including by identifying the documents, testimony or other evidence supporting each fact you identify in response to the interrogatory.

ORIGINAL RESPONSE TO INTERROGATORY NO. 17:

Plaintiffs object to this interrogatory because it was served on February 8, 2022, and any response would be due March 10, 2022, which is after the current fact discovery cut-off of March

1 4, 2022. Therefore, this interrogatory “call[s] for responses or depositions after the applicable
2 discovery cut-off” and is not enforceable based on Civil Local Rule 37-3 of the Northern District
3 of California.

4 Plaintiffs further object to this interrogatory as Google has delayed and continues to delay
5 document production. Google was ordered to finish custodial production by October 6, 2021, (Dkt.
6 275, at 6). Since October 6, 2021, Google has produced more than 80 volumes of documents
7 exceeding millions of pages of documents. And Google withheld (and is still withholding)
8 productions of highly relevant documents, including how: (a) Google identified, quantified, and
9 monitored Incognito traffic; (b) Google used that same analysis to assess the Google revenue
10 associated with Incognito traffic; (c) Google’s employee Bert Leung led this Incognito detection
11 analysis. (Dkt. 399). Despite leading this Incognito detection analysis, Mr. Leung was not included
12 on Google’s initial disclosures, nor was he was included in the more than 200 proposed custodians.
13 GOOG-BRWN-00023909. The same is true for Google’s employee Mandy Liu, who throughout
14 2020 and 2021 developed and actually implemented an incognito detection field in specific logs
15 to identify Incognito browsing data. (Dkt. 424, at P22). Also, in October 2021, pursuant to this
16 Court’s Order, (Dkt. 298), Plaintiffs identified 20 “Priority” RFPs. Google has since then dragged
17 out the production of responsive documents, and Google still has not specified the extent to which
18 it will produce responsive documents or finish producing documents responsive to these Priority
19 RFPs.

20 Plaintiffs further object to this interrogatory as Google has delayed and continues to delay
21 producing witnesses for testimony. On December 3, 2021, Plaintiffs served three deposition
22 notices pursuant to Rule 30(b)(6). Google did not respond for weeks, and only after Plaintiffs twice
23 requested a response did Google agree to meet and confer in December (and then again in January)
24 to discuss these deposition notices. The dispute was finally submitted to the Court on February 18,
25 2022, (Dkt. 411), and ruled on February 22, 2022. (Dkt. 416). Google still has not provided
26 designees nor dates for these depositions, despite Plaintiffs’ repeated requests. Google also has
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1 not produced all witnesses that Plaintiffs sought deposition testimony for months, such as Sabine
2 Borsay.

3 Plaintiffs further object to this as a premature request for expert-related discovery.
4 Discovery is ongoing, Google has delayed its production of documents and information in this
5 matter, and the deadlines for Plaintiffs to disclose any expert reports and to file their motion for
6 class certification is months away. Thus, should the Court require Plaintiffs to respond to this
7 interrogatory, Plaintiffs reserve the right to amend the response to this request as discovery
8 proceeds and additional facts are revealed through the discovery process. Plaintiffs further objects
9 to this Request to the extent it seeks information protected by the attorney-client, work-product
10 privileges, and seeks the mental impressions of counsel.

11 Based on Local Civil Rule 37-3 and the foregoing objections, Plaintiffs are not required
12 and will not answer this interrogatory.

13 **SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 17:**

14 Plaintiffs incorporate their objections from their March 4, 2022 response, and further object
15 to this Interrogatory as Google has not yet completed document production, has not yet fulfilled
16 its outstanding Court-ordered obligations with the Special Master, has not yet produced all
17 witnesses that Plaintiffs sought for deposition testimony (including Lorraine Twohill and Sabine
18 Borsay), and has otherwise withheld and destroyed relevant discovery (as detailed in Plaintiffs'
19 other filings with the Court). Based on the Court's March 15, 2022 discovery order (Dkt. 487),
20 Plaintiffs supplement their response with the below summary of the principal facts and exemplary
21 documents supporting each cause of action in their Third Amended Complaint. Plaintiffs
22 incorporate by reference the allegations stated in their Third Amended Complaint and also the
23 forthcoming expert reports, including all of the documents cited with those reports.

24 **Google's History of Privacy Violations**

25 As detailed in Plaintiffs' Third Amended Complaint, Google has a demonstrated history of
26 knowing privacy violations. For example, in 2010, Google "used deceptive tactics and violated
27 its own privacy promises to consumers when it launched its social network, Google Buzz." The
28

1 Federal Trade Commission (“FTC”) charged Google with using deceptive tactics and violations
2 of Google’s privacy promises, and to settle those violations, the FTC barred Google from future
3 privacy misrepresentations and required Google “to implement a comprehensive privacy
4 program.”¹ Google entered into a consent decree with the FTC (the “FTC Consent Decree”) which, for 20 years, required Google not to misrepresent, in any manner, expressly or by
5 implication, the extent to which Google collects and uses consumers’ (including Plaintiffs’ and
6 Class Members’) information.² The FTC Consent Decree also required Google not to misrepresent
7 the extent to which consumers (including Plaintiffs and Class Members) may exercise control over
8 the collection, use, or disclosure of consumers’ (including Plaintiffs’ and Class Members’) information.³ Among the information covered by the FTC Consent Decree includes persistent
9 identifiers, such as an IP address, and combinations of additional data with an IP address.⁴ Just
10 one year later, however, Google violated the FTC Consent Decree by misrepresenting what Google
11 would and would not collect through Apple’s Safari web browser, where Google had
12 misrepresented its practice and use of placing cookies and serving targeted advertisements. This
13 ultimately resulted in (at the time) a record-setting \$22.5 million civil penalty to settle the
14 violations.⁵ In 2019, Google (and YouTube) agreed to pay \$170 million to settle more allegations
15 from the FTC and the New York Attorney General stemming from illegal collection of personal
16 information from children without their parents’ consent.⁶ In 2020, a €50 million fine was upheld
17 for Google’s failure to provide clear notices and obtain users’ valid consent to process consumers’
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23 ¹ See, e.g., <https://www.ftc.gov/news-events/press-releases/2011/03/ftc-charges-deceptive-privacypractices-googles-rollout-its-buzz>

24 ² See, e.g., <https://www.ftc.gov/sites/default/files/documents/cases/2011/03/110330googlebuzzagreement.pdf>.

25 ³ *Id.*

26 ⁴ *Id.*

27 ⁵ See, e.g., <https://www.ftc.gov/news-events/press-releases/2012/08/google-will-pay-225-million-settle-ftc-charges-it-misrepresented>.

28 ⁶ See, e.g., <https://www.ftc.gov/news-events/news/press-releases/2019/09/google-youtube-will-pay-record-170-million-alleged-violations-childrens-privacy-law>.

1 personal information and data for advertisement personalization purposes.⁷ **Google Promises**
2 **Control Through Private Browsing Modes**

3 As confirmed by their sworn deposition testimony, Plaintiffs reviewed uniform Google
4 disclosures (in the Google Terms of Service, Google Privacy Policy, Chrome Terms of Service,
5 Chrome Privacy Notice, and Chrome Incognito splash screen) representing that they were in
6 “control” of what information Google collects, and that they could exercise that control by
7 enabling private browsing mode, to prevent Google from collecting their private browsing activity.
8 Google’s Privacy Policy tells users that Google “will not reduce [users’] rights under th[e] Privacy
9 Policy without [users’] explicit consent.” In September 2016, when Google updated its browser
10 application for Apple iOS, Google promised that users would have “[m]ore control with incognito
11 mode” and that their “searches are [the consumers’] business. That’s why [Google has] added the
12 ability to search privately with incognito mode in the Google app for iOS. When you have
13 incognito mode on in your settings, your search and browsing history will not be saved.”⁸ Then
14 in May 2018, Google modified its privacy policy to state: “You can use our services in a variety
15 of ways to manage your privacy You can also choose to browse the web privately using
16 Chrome in Incognito mode.”⁹ Plaintiffs used private browsing modes so that their private
17 browsing activity would not be tracked, recorded, or otherwise memorialized. Plaintiffs saw the
18 Incognito splash screen each time they chose to browse privately with Chrome’s Incognito mode,
19 which turned the screen dark, depicts a stealthy figure, and makes two separate promises: first, that
20 they “can browse privately,” and second, that “other people who use the device won’t see [their]
21 activity.” Because Google’s own Incognito splash screen, including without limitation the
22 statement that users “can browse privately,” there was an objective and reasonable expectation that
23 Google would not intercept and collect Plaintiffs’ private browsing activity.
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25

26 ⁷ See, e.g., <https://www.reuters.com/article/us-france-google-privacy/top-french-court-upholds-56-million-google-privacy-breach-fine-idUSKBN23Q2KS>.

27 ⁸ See, e.g., <https://www.googblogs.com/the-latest-updates-and-improvements-for-the-google-app-for-ios/>, <https://search.googleblog.com/index.html>.

28 ⁹ See, e.g., <https://policies.google.com/privacy/archive/20171218-20180525?hl=en-US>.

1 Google's Incognito splash screen also represents that Chrome will not save browsing
2 history, cookies and site data, and information entered into forms, reinforcing that objective and
3 reasonable expectation that any private browsing activity would be concealed from and not subject
4 to Google's interception and collection. Each time Plaintiffs enabled Incognito, the Incognito
5 splash screen also stated that their activity in private browsing mode might still be visible to the
6 websites they visit, their employer or school, or their internet service provider. Google was not
7 listed, and Plaintiffs did not consent to Google's interception and collection of their private
8 browsing activity. Plaintiffs considered this private browsing activity private and confidential,
9 and did not intend to share it with Google. Plaintiffs also never consented to Google's attempt
10 and/or interception of their private browsing communications, Google's attempt and/or collection
11 of any data from their private browsing, or Google's attempt and/or use of any data from their
12 private browsing activity. Plaintiffs chose to browse privately to avoid Google's attempt and/or
13 collection of that browsing activity and to browse the web without Google attempting and/or
14 spying on and gathering that browsing activity for its own monetary gain. But without Plaintiffs'
15 knowledge, Google attempted and continued to monitor and collect their private browsing activity
16 and attempted and/or used that private browsing activity for its own monetary gain.

17 Google's attempts to surreptitiously intercept, collect, and use Plaintiffs' and Class
18 Members' private browsing activity is equally actionable as Google's actual interceptions,
19 collections, and usage of Plaintiffs' and Class Members' private browsing activity. For example,
20 the Federal Wiretap Act prohibits any "endeavor[] to intercept" or procuring any other person to
21 "endeavor to intercept" any wire, oral, or electronic communication. 18 U.S.C. § 2511(1)(a).
22 Also, the Federal Wiretap Act prohibits any "endeavor[] to use the contents of any wire, oral, or
23 electronic communication, knowing or having reason to know that the information was obtained
24 through the interception of a wire, oral, or electronic communication" 18 U.S.C. § 2511(1)(d).
25 California law also prohibits Google from "willfully and without the consent of all parties to the
26 communication, or in any unauthorized manner, read[ing], or attempt[ing] to read, or to learn the
27 contents or meaning of any message, report, or communication" Cal. Pen. Code § 631(a)
28

(emphasis added). And California law equally prohibits Google from attempting to use illegally wiretapped data. Cal. Pen. Code § 631(a). California law applies to all Plaintiffs and Class Members, since Google’s own Terms of Service explicitly states “California law will govern all disputes arising out of or relating to these terms, service specific additional terms, or any related services, regardless of conflict of laws rules. These disputes will be resolved exclusively in the federal or state courts of Santa Clara County, California, USA, and [users] and Google consent to personal jurisdiction in those courts.”¹⁰

Google’s Illegal Private Browsing Mode Conduct

During the Class Period (from June 1, 2016 to the present), Plaintiff Brown recalls using Chrome’s Incognito mode to browse the following non-exhaustive websites and categories of websites: [REDACTED]

During the Class Period (from June 1, 2016 to the present), Plaintiff Byatt recalls using Chrome’s Incognito mode to browse the following non-exhaustive websites and categories of websites: [REDACTED]

During the Class Period (from June 1, 2016 to the present), Plaintiff Castillo recalls using Chrome’s Incognito mode to browse the following non-exhaustive websites and categories of websites: [REDACTED]¹²

During the Class Period (from June 1, 2016 to the present), Plaintiff Davis recalls using Chrome’s Incognito mode to conduct the overwhelming majority of his browsing activity because his devices use Chrome’s Incognito mode by default, and the only time Plaintiff Davis recalls any browsing activity performed outside of private browsing mode is when he clicked a hyperlink from an email that hyperlink launched his browser in non-private browsing mode. Plaintiff Davis recalls

¹⁰ See, e.g., Response to Interrogatory No. 15.

¹¹ See, e.g., Responses to Interrogatories Nos. 1–10.

¹² See, e.g., Responses to Interrogatories Nos. 1–10.

¹³ See, e.g., Responses to Interrogatories Nos. 1–10.

1 using Chrome's Incognito mode to browse the following non-exhaustive websites and categories
2 of websites: [REDACTED]

3 [REDACTED].
4
5 During the Class Period (from June 1, 2016 to the present), Plaintiff Trujillo recalls using
6 Chrome's Incognito mode to browse the following non-exhaustive websites and categories of
7 websites: [REDACTED]
8 [REDACTED]

9 Plaintiffs and Class Members—numbering in the millions—enabled private browsing
10 mode in Google's Chrome browser and other browsers to prevent others (including Google) from
11 finding out what they were viewing on the Internet during those private browsing mode sessions.

12 Through Google tracking or advertising code,¹⁵ Google surreptitiously attempted and/or directed
13 Plaintiffs' and Class Members' browsers to send a separate message to Google, which contained
14 Plaintiffs' and Class Members' highly sensitive and confidential information, including: the
15 content the user's browser was asking the website to display, the URL information of what the
16 user has been reviewing and requesting from websites, IP address, fingerprinting data, user IDs,
17 geolocation information, and information contained in cookies saved on the user's browser.
18 Google has not contested these illegal attempts, interceptions, and collections practices.¹⁶

19 Additionally, through Chrome, Google surreptitiously attempted and/or intercepted and
20 collected (and continues to attempt and/or intercept and collect) from Plaintiffs and Class Members
21 a unique string of characters called Google's X-Client-Data Header, which is not present when a
22 user enables Chrome's Incognito mode. The absence of the X-Client-Data Header indicates to
23 Google that a Chrome user has enabled Chrome's Incognito mode, but Google continued (and still
24 continues) to attempt and/or collect Plaintiffs' and Class Members' highly sensitive and
25 confidential information and attempt and/or used (and still uses) that information for Google's
26

27 ¹⁴ See, e.g., Responses to Interrogatories Nos. 1–10.

28 ¹⁵ See, e.g., Third Amended Complaint, ¶¶ 63–66, 78–83, 102.

¹⁶ See, e.g., Response to Interrogatory No. 11.

1 business purposes wholly unrelated to Plaintiffs’ and Class Members’ use of the websites they
2 browsed in private browsing mode.¹⁷

3 **Google Acted Without Consent**

4 Google’s surreptitious attempt and/or interception and collection practices were without
5 consent. Google did not notify users or publishers of these attempts and practices. To the contrary,
6 Google represented to Plaintiffs and Class Members that they were “in control of what information
7 [users] share with Google,” and that they could use Google services “in a variety of ways to
8 manage [their] privacy” and “control what [Google] collects and how your information is used.”
9 Google represented that “If you want to search the web without saving your search activity to your
10 account, you can use private browsing mode in a browser (like Chrome or Safari).”¹⁸

11 The uniform, class-wide disclosures failed to notify Plaintiffs and Class Members that
12 Google attempted and/or collected private browsing activity when users were in private browsing
13 mode. Neither Plaintiffs nor Class Members provided or could have provided consent to Google’s
14 attempted and/or actual data tracking practices while Plaintiffs and Class Members were in private
15 browsing mode.¹⁹

16 Google also failed to obtain consent from websites to attempt and/or track, intercept, or
17 collect Plaintiffs’ and Class Members’ data during private browsing mode sessions. Google never
18 informed websites that Google attempted and/or intercepted user communications from private
19 browsing mode sessions. Indeed, Google informs site and app owners using Google services that
20 the “Google privacy policy and principles describes how we treat personal information when you
21 use Google’s products and services, including Google Analytics” and that Google will adhere to
22 Google’s Privacy Policy for consumers (including Plaintiffs and Class Members) and websites that
23 use Google Ad Manager. As described above, Google’s Privacy Policy states that users “can use
24 our services in a variety of ways to manage [their] privacy,” including that (1) users could “choose
25 to browse the web privately using Chrome in Incognito mode” and that (2) “across our services,
26

27 ¹⁷ See, e.g., Response to Interrogatory No. 11.

28 ¹⁸ See, e.g., Response to Interrogatory No. 11.

¹⁹ See, e.g., Response to Interrogatory No. 11.

1 [users] can adjust [their] privacy settings to control what [Google] collect[s] and how [their]
2 information is used.” In denying Google’s motions to dismiss, Judge Koh found as a matter of
3 law that “Google’s Privacy Policy does not disclose Google’s alleged data collection while
4 Plaintiffs were in private browsing mode.”²⁰

5 Only after this litigation, on September 3, 2020, Google released a beta version of what it
6 calls “Consent Mode” for Google Analytics.²¹ This “Consent Mode” assists third-party websites
7 to identify whether a particular consumer (which includes Plaintiffs and Class Members) knows
8 and has consented to use of Google Analytics and other Google services.²² But, even before
9 Google’s provision of “Consent Mode,” Google did not inform consumers (including Plaintiffs
10 and Class Members) which websites implement Google Analytics or other Google services that
11 collect and use personal information, such as private browsing activity. And because Google
12 Analytics and other Google services begin collecting consumers’ (including Plaintiffs’ and Class
13 Members’) data as soon as a page begins to load—before a consumer even has a chance to review
14 the page—there is no effective way that Plaintiffs and Class Members could consent to Google’s
15 illegal conduct. Indeed, Google’s disclosures did not inform of its illegal conduct or obtain
16 consent, as Google promised that it would adhere to its own Privacy Policy as represented
17 whenever Google Analytics or other Google services are used. For example, on Google’s own
18 Analytics Help page for Websites, Google states that Google is “keenly aware of the trust you
19 place in us and our responsibility to keep your privacy and data secure. As part of this
20 responsibility, we let you know what information we collect when you use our products and
21 services, why we collect it, and how we use it to improve your experience. The Google privacy
22 policy & principles describes how we treat personal information when you use Google’s products
23 and services, including Google Analytics.” When consumers (including Plaintiffs and Class
24 Members) and websites alike follow the link for “Google privacy policy & principles,” those
25 consumers (including Plaintiffs and Class Members) and websites alike are taken to Google’s
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27 ²⁰ See, e.g., Response to Interrogatory No. 11.

28 ²¹ See, e.g., <https://blog.google/products/marketingplatform/360/measure-conversions-while-respectinguser-consent-choices/>.

²² See, e.g., <https://support.google.com/analytics/answer/9976101?hl=en>.

1 Privacy Policy homepage where Google states and reassures that consumers (including Plaintiffs
2 and Class Members) “can adjust [their] privacy settings to control what [Google] collect[s] and
3 how your information is used,” as well as that consumers (including Plaintiffs and Class Members)
4 “can choose to browse the web privately using Chrome in Incognito mode.” In other words,
5 Google services that collect and use consumers’ (including Plaintiffs’ and Class Members’)
6 information—including private browsing activity—are only implemented in a way that Plaintiffs
7 and Class Members maintain control over what Google collects.

8 **Google Acted with Knowledge and Intent**

9
10 Google knew that Plaintiffs and Class Members had misconceptions regarding private
11 browsing, and that Google’s collection practices in Incognito mode were a “mess.” Google also
12 promised users, through its Privacy Policy, that Google “will not reduce your rights under this
13 Privacy Policy without your explicit consent.” Yet Google persisted with its collection practices,
14 and did not otherwise modify its disclosures (*e.g.*, Terms of Service, Privacy Policy, Search and
15 Browse Privately page, Incognito Splash Screen) to inform Plaintiffs and Class Members of its
16 collection practices while Plaintiffs and Class Members were privately browsing and/or using
17 Incognito mode. Nowhere in these disclosures did Google explicitly obtain Plaintiffs’ and Class
18 Members’ consent for its collection practices while Plaintiffs and Class Members were in private
19 browsing mode. This failure prevents Google from relying on any argument that Plaintiffs and
20 Class Members consented to the collection practices, or that websites consented.

21 Google’s knowing and intentional collection of private browsing activity was also for the
22 purpose of committing additional tortious and unlawful acts. Google’s use of Plaintiffs’ and Class
23 Members’ private browsing activity violated the California Consumer Privacy Act of 2018
24 (“CCPA”), the FTC Consent Decree, and invaded Plaintiffs’ and Class Members’ privacy and
25 intruded upon their seclusion. Google’s collection and subsequent use of Plaintiffs’ and Class
26 Members’ private browsing activity violated the express prohibitions of the CCPA because Google
27 wrongfully used that private browsing activity for additional purposes (such as personalized and
28 targeted advertising and to improve Google’s services) without providing Plaintiffs and Class

Members with express notice of the collection and use of that private browsing activity. Additionally, the FTC Consent Decree requires that Google not misrepresent what it collects or how it uses consumer information, as well as how consumers (including Plaintiffs and Class Members) can control that collection and use. However, Google violated the FTC Consent Decree by not obtaining express affirmative consent from Plaintiffs and Class Members to collect and use their private browsing activity.²³ Through Google's illegal collection and use of private browsing activity to cause targeted advertising to be sent to Plaintiffs and Class Members and their devices, Google has impermissibly caused that private browsing activity to be revealed to others, thereby invading Plaintiffs' and Class Members' privacy and intruding upon their seclusion.

Google's document production confirms Google's surreptitious attempts and/or interception, collection, and use of Plaintiffs' and Class Members' private browsing activity. Although Google has prevented Plaintiffs from reviewing documents marked "Highly Confidential – Attorneys' Eyes Only," Plaintiffs' experts have reviewed those documents and confirmed Google's unlawful activity. Pursuant to Federal Rule of Civil Procedure 33(d), Plaintiffs direct Google to the following non-exhaustive exemplar list of documents in Google's possession, custody, and control, attached hereto as **Exhibit A**; *see also* Plaintiffs' Motion for Order Requiring Google to Show Cause Why It Should Not Be Sanctioned For Discovery Misconduct (Dkt. 430); Plaintiffs' Supplement in Support of Their Motion for Order Requiring Google to Show Cause Why It Should Not Be Sanctioned For Discovery Misconduct (Dkt. 495); Plaintiffs' Reply in Support of Their Motion for Order Requiring Google to Show Cause Why It Should Not Be Sanctioned For Discovery Misconduct (Dkt. 536).

Google's Illegal Conduct has a Sufficient Nexus with California

Plaintiffs Chasom Brown, Christopher Castillo, and Monique Trujillo are adults domiciled in [REDACTED]. Chasom Brown is domiciled in [REDACTED]; Christopher Castillo is domiciled in [REDACTED]; and Monique Trujillo is domiciled in [REDACTED].

²³ *See, e.g., In the Matter of Google, Inc.*, No. C-4336, Decision and Order Part II, p.3 (F.T.C. Oct. 13, 2011), available at <https://www.ftc.gov/enforcement/cases-proceedings/102-3136/google-incmatter>.

1 [REDACTED]. During the class period, Plaintiffs Brown, Castillo, and Trujillo used private browsing
2 modes (including Incognito mode), which Google unlawfully attempted and/or intercepted,
3 collected data from, analyzed, and monetized.

4 Additionally, Google employees in California have had ready access to the private
5 browsing data at issue in this litigation. Google has admitted that “Google employees, including
6 those based in California, may access user data provided they have proper access permissions,” to
7 include data collected by Google from users’ visits to websites with Google Analytics and Google
8 Ad Manager, including the private browsing activity at issue in this litigation. RFA No. 44. I am
9 advised by my counsel that Google’s engineers have testified and confirmed that Google has at
10 least one data center in California, and that Google engineers located in California have access to
11 systems (and the data stored therein) that would have unlawfully attempted and/or intercepted,
12 collected, analyzed, and monetized private browsing activity.

13 **Google Benefited From, and Plaintiffs Were Damaged by, Google’s Illegal Conduct**

14 Plaintiffs provided valuable consideration in the form of their personal information for the
15 use of Google products in non-private modes, but Google unlawfully attempted and/or intercepted,
16 collected data from, analyzed, and monetized Plaintiffs’ browsing activity conducted in private
17 browsing mode, which Google has used to its benefit to increase its profits and revenues from
18 targeted advertising and improvements of Google’s other products wholly unrelated to Chrome.²⁴
19 Plaintiffs have been aware of the value of their personal data for years, and chose to browse
20 privately to protect that personal data from Google’s (and other tech companies’) collection for
21 their own benefit and profit. Plaintiffs were aware of companies that provide monetary
22 compensation for personal data before filing or joining this lawsuit. Even though Plaintiffs had
23 not attempted to sell their personal data to those companies, the personal data that Google has
24 unlawfully attempted and/or intercepted while Plaintiffs were in private browsing mode has
25 inherent value, and Google unlawfully collected that personal data without providing any
26 compensation.²⁵

27
28 ²⁴ See, e.g., Response to Interrogatory No. 13.

²⁵ See, e.g., Response to Interrogatories Nos. 1–10.

1 Based on Google's continued surreptitious attempts and/or interception and collection of
2 private browsing activity from Plaintiffs and Class Members alike, injunctive (or corresponding
3 declaratory) relief is appropriate: Google continues its unlawful conduct without obtaining
4 consent.²⁶ Through Google's surreptitious attempt and/or collection of any private browsing
5 activity, Google has diminished the value of this data to Plaintiffs and Class Members by the
6 amount that, but for Google's unlawful actions, at least Google would have been willing to pay
7 Plaintiffs for access to that private browsing activity. Google is still producing documents relevant
8 to this analysis, and expert discovery has not yet closed, so Plaintiffs are not able to yet provide a
9 specific value on the extent to which Google's actions have diminished the value of Plaintiffs'
10 private browsing activity that Google surreptitiously attempted and/or collected while Plaintiffs
11 were in private browsing mode.²⁷

12 Google's illegal conduct benefited Google. Based on Google's revenue model, Google is
13 paid more money based on the accuracy of its advertisements, and Google collects more money
14 for Google services that are more accurate. For example, while Google Analytics can be
15 implemented for "free," specific information, reports, and analytics are provided for a fee. The
16 more granular the requested information, reports, and analytics, the more Google charges, like
17 with Google's DV360, Ad Hub, and Google audience products. By collecting private browsing
18 activity, Google's products, services, and algorithms (related to browsing activity and other
19 products at Google that Google has refused to identify²⁸) are enriched and Google is able to charge
20 more money for its services.

21 Google's document production confirms Plaintiffs' damages and entitlement to other
22 relief. Although Google has prevented Plaintiffs from reviewing documents marked "Highly
23 Confidential – Attorneys' Eyes Only," Plaintiffs' experts have reviewed those documents and
24

25 ²⁶ See, e.g., Response to Interrogatory No. 11.

26 ²⁷ See, e.g., Response to Interrogatory No. 16.

27 ²⁸ See, e.g., Google's Objection to Rule 30(b)(6) Notice 1, Topic 16, requesting corporate
28 representative testimony concerning Google's use of information collected from users within a
private browsing mode for purposes of improving and developing Google services, products, and
algorithms (Google objected, averring that "This topic is overly broad and amorphous and would
implicate dozens of Google business units and products.") (Dkt. 410-4, at 12).

1 confirmed Google's unlawful activity. Pursuant to Federal Rule of Civil Procedure 33(d),
2 Plaintiffs direct Google to the following non-exhaustive exemplar list of documents in Google's
3 possession, custody, and control, attached hereto as **Exhibit B**; *see also* Plaintiffs' Motion for
4 Order Requiring Google to Show Cause Why It Should Not Be Sanctioned For Discovery
5 Misconduct (Dkt. 430); Plaintiffs' Supplement in Support of Their Motion for Order Requiring
6 Google to Show Cause Why It Should Not Be Sanctioned For Discovery Misconduct (Dkt. 495);
7 Plaintiffs' Reply in Support of Their Motion for Order Requiring Google to Show Cause Why It
8 Should Not Be Sanctioned For Discovery Misconduct (Dkt. 536).
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Dated: April 15, 2022

MORGAN & MORGAN

/s/ John A. Yanchunis

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PROOF OF SERVICE

I, Jennifer Miller, declare:

I am a citizen of the United States and employed in the County of San Francisco, California. I am over the age of 18 and not a party to the within action; my business address is 711 Van Ness Avenue, Suite 500, San Francisco, California 94102.

On April 15, 2022, I served the following document described as:

Plaintiffs' Objections and Responses to Defendant's Sixth Set of Interrogatories

By electronic mail transmission from jbmiller@forthepeople.com on April 15, 2022, by transmitting a PDF format copy of such document to each person at the e-mail addresses listed below. The document was transmitted by electronic transmission and such transmission was reported as complete and without error:

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23 Executed on April 15, 2022, at Memphis, Tennessee.

24 /s/ Jennifer Miller
25 Jennifer Miller
26
27
28

EXHIBIT 40

**DEFENDANT'S
AMENDED
RESPONSES AND
OBJECTIONS TO
PLAINTIFF'S
INTERROGATORIES
(NOS. 1 & 3)**

CONFIDENTIAL

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

CHASOM BROWN, WILLIAM BYATT,
JEREMY DAVIS, CHRISTOPHER
CASTILLO, and MONIQUE TRUJILLO
individually and on behalf of all other
similarly situated,

Plaintiffs,

v.

GOOGLE LLC,

Defendant.

Case No. 5:20-cv-03664-LHK

**DEFENDANT’S AMENDED RESPONSES AND OBJECTIONS TO
PLAINTIFFS’ INTERROGATORIES (NOS. 1 & 3)**

Pursuant to Federal Rules of Civil Procedure Rule 33, Defendant Google LLC (“Google”) hereby submits the following amended responses and objections to Plaintiffs’ Interrogatories (Nos. 1 & 3). These amended objections and responses are made solely for the purpose of and in relation to this action. In addition, the amended objections and responses set forth in this document are based on Google’s knowledge, investigations, and analysis to date. As discovery proceeds, Google may become aware of additional facts or evidence and its analysis of the case may change. Google reserves all rights to supplement and amend its objections and responses accordingly.

GENERAL OBJECTIONS

The following objections apply to each and every interrogatory propounded by Plaintiffs and are incorporated into each of the specific objections by reference as if set forth fully therein:

1. Google objects to Plaintiffs’ interrogatories as compound and including twenty-one (21) sub-parts, which counts against the 25 per party limit under Fed. R. Civ. P. 33(a)(1).

2. Google objects to Plaintiffs’ definition of “GOOGLE,” “YOU,” and “YOUR” as encompassing “any of its directors, officers, consultants, agents, representatives, predecessors in interest, subsidiaries, assignees, licensees, employees, attorneys and any other persons acting on GOOGLE LLC’S behalf, including contractors,” as well as “purporting to act on” Google’s behalf.

1 Google further objects to these definitions to the extent that it seeks to require Google to produce
2 or otherwise analyze any document or other information that is not within the possession, custody,
3 or control of Google. Google further objects to these definitions to the extent that it purports to
4 impute knowledge of unspecified or unknown parties or persons to Google. Google further objects
5 to these definitions as overly broad, vague, and ambiguous to the extent they purport to include
6 entities other than Google, which is the only named defendant in the present action. Google further
7 objects to these definitions and instruction to the extent that they include Google's attorneys and,
8 therefore, cause interrogatories using "Google" to seek improperly information protected by the
9 attorney-client privilege, the work product doctrine, the common interest privilege and/or any
10 other applicable privileges or immunities.

11 3. Google objects to Plaintiffs' definition of "PERSON" or "PERSONS" as overly
12 broad and unduly burdensome in that it purports to include "firm, association, organization,
13 partnership, business, trust, corporation, or public entity."

14 4. Google objects to the definition of "X-CLIENT DATA HEADER" as a "unique
15 digital string of characters as described in paragraphs 94 to 95 of the First Amended Complaint."
16 Paragraph 95 alleges that "Google's Chrome browser *identifies every device* upon installation of
17 Chrome with a *unique digital string of characters* called Google's 'X-Client-Data Header,' such
18 that *Google uniquely identifies the device and user thereafter*" (emphasis added). Plaintiffs'
19 definition and allegations about the X-Client Data Header are factually incorrect. The X-Client
20 Data Header is neither "a unique digital string of characters," nor does it "uniquely identif[y]" a
21 device or user. In its responses below, Google uses the term "X-Client-Data Header" to refer to a
22 string of characters that is randomized based on a number from 0 to 7999 to ensure the header is
23 non-identifying, as described in the publicly available Chrome White Paper (*see*
24 www.google.com/chrome/privacy/whitepaper.html).

25 5. Google objects to Plaintiffs' definitions of "ALL," "USER," "INCLUDE,"
26 "CONCERNING," "RELATE," or "RELATING TO" to the extent that they propose to alter the
27 plain meaning or scope of any specific interrogatory and to the extent that such alteration renders
28 the interrogatory vague, ambiguous, and overbroad.

1 6. Google objects to Plaintiffs' Definitions, Instructions, and interrogatories to the
2 extent they seek information and/or records that are not reasonably accessible and whose inclusion
3 is not proportional to the needs of the case.

4 7. Google objects to the Requests to the extent that they seek information shielded
5 from disclosure by the attorney-client privilege, the work-product doctrine, the settlement privilege
6 and/or any other applicable privilege or protection from discovery.

7 8. Google objects to Plaintiffs' Definitions, Instructions, and interrogatories to the
8 extent they conflict with or encompass information and/or records falling outside the scope of
9 discovery under the Federal Rules of Civil Procedure, the local rules of the Northern District of
10 California, or any discovery orders governing this case.

11 9. Google's responses to these interrogatories are hereby made without waiving or
12 intending to waive, but rather, to the contrary, by preserving and intending to preserve:

- 13 a. All questions as to the competence, relevance, proportionality, materiality, and
14 admissibility as evidence for any purpose of the information or documents, or
15 the subject matter thereof, in any aspect of this action or any other court action
16 or judicial or administrative proceeding or investigation;
17 b. The right to object on any ground to the use of any such information or
18 documents, or the subject matter thereof, in any aspect of this action or any
19 other court action or judicial or administrative proceeding or investigation;
20 c. The right to object at any time in connection with any further response to this
21 or any other request for information or production of documents; and
22 d. The right at any time to supplement its responses.

23 10. In offering to produce various types of documents, information, or things, Google
24 makes no representation that any such documents, information, or things exist or are actually
25 known (or not known) to exist.

26 11. Google anticipates that future discovery, independent investigation, or analysis will
27 supply additional facts and add meaning to known facts, as well as establish new factual
28 conclusions and legal contentions, all of which may lead to additions to, changes in, and variations

1 from the responses set forth herein. Google reserves the right to modify, supplement, withdraw, or
 2 otherwise alter its responses to these interrogatories in accordance with the Federal Rules of Civil
 3 Procedure, the local rules of the Northern District of California, or any discovery orders governing
 4 this case.

5 **OBJECTIONS AND RESPONSES TO INTERROGATORIES**

6 Subject to the foregoing objections, Google objects and responds to Plaintiffs'
 7 interrogatories as follows:

8 9 **INTERROGATORY NO. 1:**

10 For the class period, describe Google's collection, storage, and use of data from users'
 11 private browsing, including (a) identifying what data Google collects (e.g., URL), (b) how Google
 12 collects such data (e.g., Google scripts), (c) where and how such data is stored by Google (e.g.,
 13 specific Google databases), (d) how such data is used (e.g., profiles, association with other data,
 14 advertising, product improvement), and (e) describing any changes during the class period.

15 16 **FEBRUARY 5, 2021 RESPONSE TO INTERROGATORY NO. 1:**

17 Google incorporates its objections to Plaintiffs' definitions and instructions as if set forth
 18 fully herein. Google objects to this interrogatory as vague, ambiguous, and overbroad as to the
 19 meaning of "data from users' private browsing." Google will assume for purposes of its responses
 20 that "data from users' private browsing" means data generated when users visited a third-party
 21 website that used Google Analytics or Ad Manager while private browsing using Chrome and
 22 while not logged in to their Google Account, as that is the data at issue in this class action. (*See*
 23 *Dkt. 68 at ¶ 192*). Google further objects to this interrogatory as vague, ambiguous, and overbroad
 24 with its undefined use of the term "profiles." In responding to this interrogatory, Google interprets
 25 "profiles" as referring to data from separate web browsing sessions and tied to the same
 26 authenticated or pseudonymous ID. Google further objects to this interrogatory to the extent it
 27 seeks information related to non-Chrome browsers, which may have unique browser features that
 28 impact data collection by Google Ad Manager and Google Analytics. Google also objects to this

1 interrogatory as it contains five (5) discrete sub-parts, which counts against the 25 per party limit
2 under Federal Rule of Civil Procedure (“Rule”) 33(a)(1).

3 Subject to the foregoing general and specific objections, and based on its investigation to
4 date, Google responds to each of the five discrete sub-parts as follows:

5 **Sub-part (a):**

6 As Google has explained in its Privacy Policy, “[w]e collect information about the services
7 that you use and how you use them, like when you ... visit a website that uses our advertising
8 services, or view or interact with our ads or content. This information includes: ... details of how
9 you used our service, such as search queries ... internet protocol [IP] address... and referral URL.”

10 The fact alone that a user is in private browsing mode does not change the types of data
11 collected when Chrome users visit a third-party website that uses Google Analytics or Ad Manager
12 while not logged in to their Google Accounts. Google designed the Chrome browser to prevent
13 visited websites, including Google, from recognizing whether a user is in private browsing mode.
14 As Google’s disclosures explain, “although [p]rivate browsing works differently depending on
15 which browser you use,” it “usually means” that “[t]he searches you do or sites you visit won’t be
16 saved to your device or browsing history,” and cookies placed on the browser during a private
17 browsing session “are deleted after you close your private browsing window or tab.” This is how
18 private browsing works in Chrome’s Incognito mode.

19 Therefore, depending on (1) the particular website visited, (2) the particular Google
20 service(s) the website uses, (3) the website’s specific settings and selections for each of its Google
21 services, and (4) the user settings, browser settings, and other software settings and plug-ins,
22 Google may receive through a service certain data generated by a user’s interactions with the
23 service, which data may include: IP address; the web page the user viewed; referral URL; and
24 search queries. To the extent it receives such data, Google receives the data regardless of whether
25 the user is in Incognito mode.

26 **Sub-part (b):**

27 Google collects such data, including cookie values, by way of scripts the websites choose
28 to install for the purpose of sending such data to Google to provide Analytics and Ad Manager

1 services. See, e.g.,
 2 <https://developers.google.com/analytics/resources/concepts/gaConceptsTrackingOverview>;
 3 <https://developers.google.com/ad-manager/api/start>.

4 **Sub-part (c):**

5 Google stores the data at issue in this case in Analytics and Ad Manager protocol buffer
 6 logs that do not associate the data with users' Google Accounts.

7 **Sub-part (d):**

8 Google uses data it receives to provide analytics and advertising services to the websites
 9 that use Google Analytics and Google Ad Manager. Google Analytics uses cookies to identify
 10 browsers for the purpose of allowing websites to understand how visitors engage with their sites.
 11 For instance, Google will assess and report website traffic based on the cookie ID in a Google
 12 Analytics' first-party cookie set on a user's browser. Google Ad Manager uses cookies to identify
 13 browsers for the purpose of serving tailored advertisements. Therefore, in the advertising context,
 14 Google will use the cookie ID in a third-party cookie set on a user's browser to serve personalized
 15 advertising.

16 When a user enables Incognito mode in Chrome, however, the browser opens a new tab
 17 with a separate (and empty) cookie repository (also referred to as a cookie jar or cookie store). As
 18 a result, when a user visits a website in Incognito mode, neither the website, nor Google (assuming
 19 the website uses Google's analytics or advertising services), can read cookies that were set on the
 20 browser before the user enabled Incognito mode. Because Google Analytics and Ad Manager use
 21 cookies to identify browsers, when a user enables Incognito mode, the user appears to Google as
 22 a new user. Incognito mode also deletes cookies set during an Incognito session when the session
 23 is closed. As a result, the data Google receives during a given Incognito session is not linked to
 24 data Google received from previous browsing sessions (in Incognito mode or otherwise) on the
 25 same browser. Google therefore does not associate or compile the data from separate Incognito
 26 sessions of users logged out of their Google Accounts, nor does Google link such data to a
 27 particular browser or user after the Incognito session is closed. Google does not create "profiles"
 28 from data received from users who are signed out of their Google Accounts and in Incognito mode.

1 To the best of Google’s knowledge and belief, the foregoing response applies when users visit
2 websites that use Google Analytics and Ad Manager services in non-Chrome browsers’ private
3 browsing modes.

4 Google also uses data it collects to provide, maintain, and improve its services, as well as
5 develop new services.

6 **Sub-part (e):**

7 In May 2020, Google initiated the introduction of a function in Chrome that blocks third
8 party cookies by default when a user is in Incognito mode.

11 **OCTOBER 6, 2021 AMENDED RESPONSE TO INTERROGATORY NO. 1:**

12 Google incorporates its objections to Plaintiffs’ definitions and instructions as if set forth
13 fully herein. Google objects to this interrogatory as vague, ambiguous, and overbroad as to the
14 meaning of “data from users’ private browsing.” Google will assume for purposes of its responses
15 that “data from users’ private browsing” means data generated when users visited a third-party
16 website that used Google Analytics or Ad Manager while private browsing using Chrome and
17 while not logged in to their Google Account, as that is the data at issue in this class action. (*See*
18 *Dkt. 68 at ¶ 192*). Google further objects to this interrogatory as vague, ambiguous, and overbroad
19 with its undefined use of the term “profiles.” In responding to this interrogatory, Google interprets
20 “profiles” as referring to data from separate web browsing sessions (all user activity associated
21 with a browser window) and tied to the same authenticated or pseudonymous ID. Google further
22 objects to this interrogatory to the extent it seeks information related to non-Chrome browsers,
23 which may have unique browser features that impact data collection by Google Ad Manager and
24 Google Analytics. Google also objects to this interrogatory as it contains five (5) discrete sub-
25 parts, which counts against the 25 per party limit under Federal Rule of Civil Procedure (“Rule”)
26 33(a)(1).

27 Subject to the foregoing general and specific objections, and based on its investigation to
28 date, Google responds to each of the five discrete sub-parts as follows:

1 **Sub-part (a):**

2 As Google has explained in its Privacy Policy, “[w]e collect information about the services
3 that you use and how you use them, like when you ... visit a website that uses our advertising
4 services, or view or interact with our ads or content. This information includes: ... details of how
5 you used our service, such as search queries ... internet protocol [IP] address... and referral URL.”

6 The fact alone that a user is in private browsing mode does not change the types of data
7 collected when Chrome users visit a third-party website that uses Google Analytics or Ad Manager
8 while not logged in to their Google Accounts. Google designed the Chrome browser to prevent
9 visited websites, including Google, from recognizing whether a user is in private browsing mode.
10 As Google’s disclosures explain, “although [p]rivate browsing works differently depending on
11 which browser you use,” it “usually means” that “[t]he searches you do or sites you visit won’t be
12 saved to your device or browsing history,” and cookies placed on the browser during a private
13 browsing session “are deleted after you close your private browsing window or tab.” This is how
14 private browsing works in Chrome’s Incognito mode.

15 Therefore, depending on (1) the particular website visited, (2) the particular Google
16 service(s) the website uses, (3) the website’s specific settings and selections for each of its Google
17 services, and (4) the user settings, browser settings, and other software settings and plug-ins,
18 Google may receive through a service certain data generated by a user’s interactions with the
19 service, which data may include: IP address; the web page the user viewed; referral URL; and
20 search queries. To the extent it receives such data, Google receives the data regardless of whether
21 the user is in Incognito mode.

22 **Sub-part (b):**

23 Google collects such data, including cookie values, by way of scripts the websites choose
24 to install for the purpose of sending such data to Google to provide Analytics and Ad Manager
25 services. *See,* *e.g.,*

26 <https://developers.google.com/analytics/resources/concepts/gaConceptsTrackingOverview>;

27 <https://developers.google.com/ad-manager/api/start>.

28 **Sub-part (c):**

1 Google stores the data at issue in this case in Analytics and Ad Manager protocol buffer
2 logs that do not associate the data with users' Google Accounts.

3 **Sub-part (d):**

4 Google uses data it receives to provide analytics and advertising services to the websites
5 that use Google Analytics and Google Ad Manager. Google Analytics uses cookies to identify
6 browsers for the purpose of allowing websites to understand how visitors engage with their sites.
7 For instance, Google will assess and report website traffic based on the cookie ID in a Google
8 Analytics' first-party cookie set on a user's browser. Google Ad Manager uses cookies to identify
9 browsers for the purpose of serving tailored advertisements. Therefore, in the advertising context,
10 Google will use the cookie ID in a third-party cookie set on a user's browser to serve personalized
11 advertising.

12 When a user enables Incognito mode in Chrome, however, the browser opens a new tab
13 with a separate (and empty) cookie repository (also referred to as a cookie jar or cookie store). As
14 a result, when a user visits a website in Incognito mode, neither the website, nor Google (assuming
15 the website uses Google's analytics or advertising services), can read cookies that were set on the
16 browser before the user enabled Incognito mode. Because Google Analytics and Ad Manager use
17 cookies to identify browsers, when a user enables Incognito mode, the user appears to Google as
18 a new user. Incognito mode also deletes cookies set during an Incognito session when the session
19 is closed. As a result, the data Google receives during a given Incognito session is not linked to
20 data Google received from previous browsing sessions (in Incognito mode or otherwise) on the
21 same browser. Google therefore does not associate or compile the data from separate Incognito
22 sessions of users logged out of their Google Accounts, nor does Google link such data to a
23 particular browser or user after the Incognito session is closed. Google does not create "profiles"
24 from data received from users who are signed out of their Google Accounts and in Incognito mode.
25 To the best of Google's knowledge and belief, the foregoing response applies when users visit
26 websites that use Google Analytics and Ad Manager services in non-Chrome browsers' private
27 browsing modes.

1 Google also uses data it collects to provide, maintain, and improve its services, as well as
2 develop new services.

3 **Sub-part (e):**

4 In May 2020, Google initiated the introduction of a function in Chrome that blocks third
5 party cookies by default when a user is in Incognito mode.

6
7
8 **INTERROGATORY NO. 3:**

9 During the class period, for each occasion where Google received data via Google
10 Analytics or Google Ad Manager in connection with any user browsing but where Google did not
11 also receive any X-Client-Data Header information, identify (a) the time period during which
12 Google received that data, (b) the total number of occasions Google received that data, with
13 monthly breakdowns, (c) the total number of users for which Google received that data, with
14 monthly breakdowns, (d) the types and amount of data that Google received, (e) whether and when
15 such data was paired with Google Analytics USER-ID or any additional user identifier (such as
16 users' Gmail or another Google login), with monthly breakdowns, and (f) how that data was used
17 by Google, including in terms of any profiles.

18
19 **FEBRUARY 5, 2021 RESPONSE TO INTERROGATORY NO. 3:**

20 Google incorporates its objections to Plaintiffs' definitions and instructions as if set forth
21 fully herein. Google objects to this interrogatory as vague, ambiguous, and potentially overbroad
22 as to the meaning of "where Google received data via Google Analytics or Google Ad Manager in
23 connection with any user browsing." Google will assume for purposes of its response that "data
24 via Google Analytics or Google Ad Manager in connection with any user browsing" means data
25 related to browsing by users who visited a website that used Google Analytics or Ad Manager
26 while not logged in to their Google Account. Google objects to this interrogatory as vague,
27 ambiguous, and potentially overbroad with respect to its undefined use of the term "profiles." In
28 responding to this interrogatory, Google construes "profiles" as referring to tying data from

1 separate web browsing sessions to the same authenticated or pseudonymous ID. Google also
2 objects to the phrase “Google Analytics USER-ID” as vague and ambiguous. For purposes of
3 responding to this Request, Google will assume Plaintiffs intended to reference the “User-ID”
4 mentioned at <https://support.google.com/analytics/answer/3123662>. Google also objects to this
5 Interrogatory because it does not define “class period.” Google therefore construes the period in
6 question to refer to the putative class period in Plaintiffs’ First Amended Complaint, from June
7 2016 to the present (the “Putative Class Period”). Google also objects to subparts (b) and (d) (to
8 the extent subpart (d) inquires about the “amount” of data) of this Interrogatory as they apply to
9 Analytics, and to subparts (b) and (d) (to the extent subpart (d) inquires about the “amount” of
10 data) of this Interrogatory as they apply to Ad Manager, on the grounds that, as currently phrased,
11 the subparts are overbroad, unduly burdensome, and seek information that is not relevant to the
12 case. Google is willing to meet and confer with Plaintiffs regarding the information sought in these
13 subparts. Google also objects to this interrogatory as it contains twelve (12) discrete subparts,
14 which counts against the 25 per party limit under Rule 33(a)(1).

15 Subject to the foregoing general and specific objections, and based on its investigation to
16 date, Google responds as follows:

17 **Analytics**

18 **Sub-part (a):**

19 Throughout the Putative Class Period, Google received data without any X-Client-Data
20 Header information from websites that use Google Analytics.

21 **Sub-part (c):**

22 Google does not maintain information in the ordinary course of business showing the total
23 number of users for which Google received data via Google Analytics.

24 **Sub-part (d):**

25 Google incorporates its response to Interrogatory 1(a) by reference.

26 **Sub-part (e):**

27
28

1 Google has not associated any data it received via Google Analytics with a user's Google
2 Account unless that user was signed in to their Google Account and consented to that data being
3 paired with their Google Account.

4 **Sub-part (f):**

5 Google processes the data it receives via Google Analytics on behalf of the websites that
6 use Google Analytics to report website utilization statistics. Google does not create "profiles"
7 using data from logged-out users' separate private browsing sessions. Google incorporates its
8 response to Interrogatory 1(d) by reference.

9 **Ad Manager**

10 **Sub-part (a):**

11 Throughout the class period, Google received data without any X-Client-Data Header
12 information from websites that use Google Ad Manager.

13 **Sub-part (c):**

14 Google does not maintain information in the ordinary course of business showing the total
15 number of users for which Google received data via Google Ad Manager.

16 **Sub-part (d):**

17 Google incorporates its response to Interrogatory 1(a) by reference.

18 **Sub-part (e):**

19 Google has not paired data it received via Google Ad Manager with a user's Google
20 Account unless that user was signed in to their Google Account and consented to that data being
21 paired with their Google Account.

22 **Sub-part (f):**

23 Google uses the data it receives via Google Ad Manager to serve relevant advertising.
24 Google does not create "profiles" using data from logged-out users' separate private browsing
25 sessions. Google incorporates its response to Interrogatory 1(d) by reference.

1 OCTOBER 6, 2021 AMENDED RESPONSE TO INTERROGATORY NO. 3:

2 Google incorporates its objections to Plaintiffs' definitions and instructions as if set forth
3 fully herein. Google objects to this interrogatory as vague, ambiguous, and potentially overbroad
4 as to the meaning of "where Google received data via Google Analytics or Google Ad Manager in
5 connection with any user browsing." Google will assume for purposes of its response that "data
6 via Google Analytics or Google Ad Manager in connection with any user browsing" means data
7 related to browsing by users who visited a website that used Google Analytics or Ad Manager
8 while not logged in to their Google Account. Google objects to this interrogatory as vague,
9 ambiguous, and potentially overbroad with respect to its undefined use of the term "profiles." In
10 responding to this interrogatory, Google construes "profiles" as referring to tying data from
11 separate web browsing sessions (all user activity associated with a browser window) to the same
12 authenticated or pseudonymous ID. Google also objects to the phrase "Google Analytics USER-
13 ID" as vague and ambiguous. For purposes of responding to this Request, Google will assume
14 Plaintiffs intended to reference the "User-ID" mentioned at
15 <https://support.google.com/analytics/answer/3123662>. Google also objects to this Interrogatory
16 because it does not define "class period." Google therefore construes the period in question to
17 refer to the putative class period in Plaintiffs' First Amended Complaint, from June 2016 to the
18 present (the "Putative Class Period"). Google also objects to subparts (b) and (d) (to the extent
19 subpart (d) inquires about the "amount" of data) of this Interrogatory as they apply to Analytics,
20 and to subparts (b) and (d) (to the extent subpart (d) inquires about the "amount" of data) of this
21 Interrogatory as they apply to Ad Manager, on the grounds that, as currently phrased, the subparts
22 are overbroad, unduly burdensome, and seek information that is not relevant to the case. Google
23 is willing to meet and confer with Plaintiffs regarding the information sought in these subparts.
24 Google also objects to this interrogatory as it contains twelve (12) discrete subparts, which counts
25 against the 25 per party limit under Rule 33(a)(1).

26 Subject to the foregoing general and specific objections, and based on its investigation to
27 date, Google responds as follows:
28

Analytics

Sub-part (a):

Throughout the Putative Class Period, Google received data without any X-Client-Data Header information from websites that use Google Analytics.

Sub-part (c):

Google does not maintain information in the ordinary course of business showing the total number of users for which Google received data via Google Analytics.

Sub-part (d):

Google incorporates its response to Interrogatory 1(a) by reference.

Sub-part (e):

Google has not associated any data it received via Google Analytics with a user's Google Account unless that user was signed in to their Google Account and consented to that data being paired with their Google Account.

Sub-part (f):

Google processes the data it receives via Google Analytics on behalf of the websites that use Google Analytics to report website utilization statistics. Google does not create "profiles" using data from logged-out users' separate private browsing sessions. Google incorporates its response to Interrogatory 1(d) by reference.

Ad Manager

Sub-part (a):

Throughout the class period, Google received data without any X-Client-Data Header information from websites that use Google Ad Manager.

Sub-part (c):

Google does not maintain information in the ordinary course of business showing the total number of users for which Google received data via Google Ad Manager.

Sub-part (d):

Google incorporates its response to Interrogatory 1(a) by reference.

Sub-part (e):

Google has not paired data it received via Google Ad Manager with a user's Google Account unless that user was signed in to their Google Account and consented to that data being paired with their Google Account.

Sub-part (f):

Google uses the data it receives via Google Ad Manager to serve relevant advertising. Google does not create "profiles" using data from logged-out users' separate private browsing sessions. Google incorporates its response to Interrogatory 1(d) by reference.

DATED: October 6, 2021

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PROOF OF SERVICE

NEW YORK, NEW YORK

At the time of service, I was over 18 years of age and not a party to this action. I am employed in New York, New York. My business address is 51 Madison Avenue, 22nd Floor, New York New York 10010.

On October 6, 2021, I served true copies of the following document(s) described as **DEFENDANT'S AMENDED RESPONSES AND OBJECTIONS TO PLAINTIFFS' INTERROGATORIES NOS. 1 & 3** on the interested parties in this action as follows:

SEE ATTACHED LIST

BY E-MAIL OR ELECTRONIC TRANSMISSION: I transmitted PDF format copies of the document(s) described above to the e-mail addresses on the attached Service List pursuant to the agreement between the parties to serve discovery, in lieu of other service methods, by email under Fed. R. Civ. P. 5(b)(2)(E) (see Joint Case Management Statement § 8.b, Dkt. 44) and on non-parties pursuant to the Court's August 12, 2021 Cross-use and Discovery Coordination Orders issued in *Brown v. Google LLC*, Case No. 5:20-cv-03664-LHK (Dkt. 243) and *Calhoun v. Google*, Case No.: 5:20-cv-05146-LHK-SVK (Dkt. 263). The documents were transmitted by electronic transmission and such transmission was reported as complete and without error.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on October 6, 2021 at Hoboken, New Jersey.

/s/ Seth Fortenbery

Seth Fortenbery

SERVICE LIST

Brown v. Google LLC

Case No. 5:20-cv-03664-LHK

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Calhoun v. Google LLC

Case No. 5:20-cv-5146-LHK-SVK

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EXHIBIT 41

DEFENDANT GOOGLE'S OBJECTIONS AND RESPONSES TO PLAINTIFFS' 7TH SET OF INTERROGATORIES

**Redacted Version of
Document Sought to be
Sealed**

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

CHASOM BROWN, WILLIAM BYATT,
JEREMY DAVIS, CHRISTOPHER
CASTILLO, and MONIQUE TRUJILLO,
individually and on behalf of all similarly
situated,

Plaintiffs,

v.

GOOGLE LLC,

Defendant.

Case No. 5:20-cv-03664-LHK

**DEFENDANT GOOGLE LLC'S OBJECTIONS AND RESPONSES TO PLAINTIFFS'
7TH SET OF INTERROGATORIES (NOS. 21-29)**

Pursuant to Federal Rule of Civil Procedure 33, Defendant Google LLC ("Google") hereby responds and objects to Plaintiffs' Interrogatories, Set 7 (Nos. 21-29). These objections and responses are made solely for the purpose of and in relation to this action. In addition, the objections and responses set forth in this document are based on Google's knowledge, investigations, and analysis to date. As discovery proceeds, Google may become aware of additional facts or evidence and its analysis of the case may change. Google reserves all rights to supplement and amend its objections and responses accordingly.

GENERAL OBJECTIONS

1. Google objects to Plaintiffs' definition of "GOOGLE," "YOU," and "YOUR" as encompassing "any of its directors, officers, consultants, agents, representatives, predecessors in interest, subsidiaries, assignees, licensees, employees, attorneys and any other persons acting on GOOGLE LLC'S behalf, including contractors," as well as "purporting to act on" Google's behalf. Google further objects to these definitions to the extent that it seeks to require Google to produce or otherwise analyze any document or other information that is not within the possession, custody, or

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1 control of Google. Google further objects to these definitions to the extent that it purports to impute
2 knowledge of unspecified or unknown parties or persons to Google. Google further objects to these
3 definitions as overly broad, vague, and ambiguous to the extent they purport to include entities other
4 than Google, which is the only named defendant in the present action. Google further objects to
5 these definitions and instruction to the extent that they include Google's attorneys and, therefore,
6 cause interrogatories using "Google" to improperly seek information protected by the attorney-client
7 privilege, the work product doctrine, the common interest privilege and/or any other applicable
8 privileges or immunities.
9

10 2. Google objects to Plaintiffs' definitions of "ALL," "INCLUDE," "INCLUDING,"
11 "CONCERNING," and "RELATING TO" to the extent that they propose to alter the plain meaning
12 or scope of any specific interrogatory and to the extent that such alteration renders the interrogatory
13 vague, ambiguous, and overbroad.
14

15 3. Google objects to Plaintiffs' definition of INSTANCES as vague, ambiguous and
16 overly broad.

17 4. Google objects to Plaintiffs' Definitions, Instructions, and interrogatories to the
18 extent they seek information and/or records that are not reasonably accessible and whose inclusion
19 is not proportional to the needs of the case.
20

21 5. Google objects to the interrogatories to the extent that they seek information shielded
22 from disclosure by the attorney-client privilege, the work-product doctrine, the settlement privilege
23 and/or any other applicable privilege or protection from discovery.

24 6. Google objects to Plaintiffs' Definitions, Instructions, and interrogatories to the
25 extent they conflict with or encompass information and/or records falling outside the scope of
26 discovery under the Federal Rules of Civil Procedure, the local rules of the Northern District of
27 California, or any discovery orders governing this case.
28

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1 7. Google's responses to these interrogatories are hereby made without waiving or
2 intending to waive, but rather, to the contrary, by preserving and intending to preserve:

- 3 a. All questions as to the competence, relevance, proportionality, materiality,
4 and admissibility as evidence for any purpose of the information or
5 documents, or the subject matter thereof, in any aspect of this action or any
6 other court action or judicial or administrative proceeding or investigation;
7
8 b. The right to object on any ground to the use of any such information or
9 documents, or the subject matter thereof, in any aspect of this action or any
10 other court action or judicial or administrative proceeding or investigation;
11
12 c. The right to object at any time in connection with any further response to
13 these or any other interrogatories; and
14
15 d. The right at any time to supplement its responses.

16 8. Google anticipates that future discovery, independent investigation, or analysis will
17 supply additional facts and add meaning to known facts, as well as establish new factual conclusions
18 and legal contentions, all of which may lead to additions to, changes in, and variations from the
19 responses set forth herein. Google reserves the right to modify, supplement, withdraw, or otherwise
20 alter its responses to these interrogatories in accordance with the Federal Rules of Civil Procedure,
21 the local rules of the Northern District of California, or any discovery orders governing this case.

22 **OBJECTIONS AND RESPONSES TO SPECIFIC INTERROGATORIES**

23 Subject to the foregoing objections, Google objects and responds to Plaintiffs' interrogatories
24 as follows:

25 **INTERROGATORY NO. 21:**

26 Please explain in detail why Google chose "Option 2" in the following document instead of
27 "Option 1": GOOG-CABR-04724084 at -106.
28

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RESPONSE TO INTERROGATORY NO. 21:

Google incorporates its General Objections as if set forth fully herein. Google further objects to this Interrogatory to the extent it is tailored to seek information protected by the attorney-client privilege, the work product doctrine, or the common interest doctrine, or that is otherwise privileged or protected from discovery.

Subject to and without waiving the foregoing objections, Google responds as follows:

Pursuant to Federal Rule of Procedure 33(d), Google identifies the following documents from which the information sought by this interrogatory may be derived or ascertained, and for which the burden of deriving a response to this interrogatory is the same for Plaintiffs as it is for Google:

GOOG-CABR-04724084

Google is willing to meet and confer to discuss what additional information Plaintiffs are seeking through this Interrogatory.

INTERROGATORY NO. 22:

For private browsing data stored within the data sources that Google identifies in response to the Court's Orders at Dkts. 273 and 331 (including the [REDACTED] data sources that Google identified on September 17, 2021), please explain the extent to which Google's use of that private browsing data differs in any way from Google's use of non-private browsing data stored within the same data sources.

RESPONSE TO INTERROGATORY NO. 22:

Google incorporates its General Objections as if set forth fully herein. Google objects to this interrogatory as overly broad and unduly burdensome, as it requests information related to at least [REDACTED] data sources, which is not proportional to the needs of the case. Google further objects to this interrogatory to the extent it seeks discovery which has been provided to Plaintiffs pursuant to

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1 the Special Master process. Google hereby incorporates by reference its submissions to the Special
2 Master.

3 Subject to and without waiving the foregoing objections, Google responds as follows:

4 Google incorporates by reference its amended response to Interrogatory No. 1. Sub-part (d)
5 of Google's amended response to Interrogatory 1 describes Google's use of data received from a
6 Chrome browser. Those uses do not differ based on whether or not a user has enabled Chrome's
7 Incognito mode. However, as described in Google's amended response to Interrogatory 1, sub-part
8 (d), Incognito mode will impact the cookies that Google Analytics and Ad Manager use to identify
9 browsers.
10

11 **INTERROGATORY NO. 23:**

12 For the period since June 1, 2016, please identify every circumstance in which private
13 browsing data has been or can be tracked by, keyed to, or associated with a Zwieback cookie or
14 Zwieback-based identifier.
15

16 **RESPONSE TO INTERROGATORY NO. 23:**

17 Google incorporates its General Objections as if set forth fully herein. Google further objects
18 to this interrogatory as overly broad and unduly burdensome, as it seeks information that is neither
19 relevant nor likely to lead to the discovery of relevant information because Zwieback cookies and
20 Zwieback identifiers are used for information related to Google owned and operated websites (*e.g.*,
21 for personalizing searches on Google.com), and Plaintiffs have expressly defined their purported
22 class as users "who accessed a *non-Google website* containing Google Analytics or Ad Manager."
23 See SAC, ¶ 192 (emphasis added); see also June 2, 2021 Hearing Tr. 35:13-16 (discovery "is not
24 carte blanche to all of Google's systems . . . and it will continue to tie back to the proper definitions
25 of the class"). Google further objects to this interrogatory as overly broad and unduly burdensome
26 because, on its face, it purports to seek a list of every instance where private browsing data "has
27 been or can be tracked by, keyed to, or associated with a Zwieback cookie or Zwieback-based
28

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1 identifier” for a five-year period, which includes data for users outside of the United States as well
2 as Google’s theoretical technological capabilities that are not relevant to the issues in this case.
3 Google further objects that the phrase “private browsing data has been or can be tracked by, keyed
4 to, or associated with a Zwieback cookie or Zwieback-based identifier” is vague and ambiguous.
5 Google further objects to this interrogatory because it seeks discovery which has been addressed by
6 Special Master Douglas Brush (“Special Master”), who has issued a report and recommendation
7 relating thereto. Dkt. 299. Google hereby incorporates by reference its submissions to the Special
8 Master relating thereto.
9

10 Subject to and without waiving the foregoing objections, Google responds as follows:

11 Google is willing to meet and confer with Plaintiffs to understand the relevance and proper
12 scope, if any, of this request.
13

14 **INTERROGATORY NO. 24:**

15 For the period since June 1, 2016, please explain in detail how Google has used private
16 browsing data for purposes of tracking cross-device conversions, including all relevant Google
17 mechanisms and processes (i.e., modeling, [REDACTED])

18 **RESPONSE TO INTERROGATORY NO. 24:**

19 Google incorporates its General Objections as if set forth fully herein. Google further objects
20 to this interrogatory as vague and ambiguous as to the undefined term “modeling,” as it is unclear
21 what data is being modeled for what purposes. Google further objects to the phrase “all relevant
22 Google mechanisms and processes” as vague and ambiguous, as it is a catch-all phrase that
23 meaningfully broadens the scope of the interrogatory. For the purposes of this response, Google
24 interprets this interrogatory to only refer to [REDACTED], and [REDACTED]. Google further
25 objects to interrogatory as seeking irrelevant information, as [REDACTED], and [REDACTED] are
26 only used when a user is logged into her Google Account while in private browsing mode, which is
27
28

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1 outside of the Plaintiffs' own class definitions and would therefore seek information related to non-
2 putative class members. *See* SAC, ¶ 192.

3 Subject to and without waiving the foregoing objections, Google responds as follows:

4 Chrome is designed to prevent websites, and the third-party services installed on those
5 websites such as Google Ad Manager, from detecting whether a user is in Incognito mode. As a
6 result, when Google Ad Manager receives traffic from a Chrome browser, Google Ad Manager does
7 not know whether or not the browser is in Incognito mode. Furthermore, Incognito mode data
8 cannot be used for cross-device conversion tracking by Google unless the user signs into her Google
9 Account. When a user opens an Incognito window, a new "cookie jar" is created, and any cookies
10 that are set are specific to that browser session instance (the "Incognito Session Cookies"). When a
11 user ends the Incognito browsing session, the Incognito Session Cookies are deleted. [REDACTED]
12 [REDACTED] and [REDACTED] cannot use Incognito Session Cookies to track cross-device conversions
13 because there is no identifier to link activity across devices, due to the fact that Incognito Session
14 Cookies are specific to a browser session and are deleted when the session ends.

15 Cross-device conversion tracking can only be performed by Google if an Incognito mode
16 user also signs into her Google Account in an Incognito window. In that case, the GAIA cookie and
17 Incognito session cookies will be in the same cookie jar at the same time. Only in this scenario,
18 when both cookies are in the jar at the same time, would [REDACTED], or [REDACTED] be able
19 to perform cross-device conversion tracking, based on the GAIA ID. However, such a scenario does
20 not exist in the data-flow based on Plaintiffs' own class definitions, which excludes signed-in users.
21 *See* SAC, ¶ 192.

22 **INTERROGATORY NO. 25:**

23 Please explain any and all steps that Google has considered, has taken, or plans to take to
24 mitigate any expected or actual revenue losses attributable to the [REDACTED] rollout.

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RESPONSE TO INTERROGATORY NO. 25:

Google incorporates its General Objections as if set forth fully herein. Google further objects to this interrogatory as vague and ambiguous as to the undefined phrase “██████████ rollout.” For the purposes of this response, Google interprets this phrase to refer to the launch of the ██████████ feature on the Chrome browser. Google further objects to this interrogatory as overly broad and unduly burdensome based on the request to “explain any and all steps that Google has considered, has taken, or plans to take,” which essentially seeks every discussion ever conducted related to this topic. Google further objects to this interrogatory to the extent it seeks information protected from disclosure by the attorney-client privilege or work product doctrine.

Subject to and without waiving the foregoing objections, Google responds that Google engineers had preliminary discussions about the possibility of using modeling to mitigate the impact of ██████████. However, Google has not formulated or acted upon any plan to mitigate any revenue losses attributable to the ██████████ rollout, to the extent there are or have been any such revenue losses.

INTERROGATORY NO. 26:

If Google contends that it could not have turned on third-party cookie blocking by default in Chrome Incognito mode (e.g., ██████████ prior to June 2016, please explain and identify all evidence that You contend supports Your position.

RESPONSE TO INTERROGATORY NO. 26:

Google incorporates its General Objections as if set forth fully herein. Google further objects to this request as a premature contention interrogatory. Google further objects to this interrogatory as seeking information that is neither relevant nor likely to lead to the discovery of relevant information, including Google’s theoretical technological capabilities, which are not relevant to the issues in this case. Google further objects to this interrogatory to the extent it seeks information protected from disclosure by the attorney-client privilege or work product doctrine, including *inter*

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1 *alia* discussions between Google and legal counsel regarding antitrust or competition regulations
2 applicable to blocking third-party cookies. Google further objects to this interrogatory to the extent
3 it posits a hypothetical and seeks speculation. *See, e.g., Haggarty v. Wells Fargo Bank, N.A.*, 2012
4 WL 4113341, at *2 (N.D. Cal. Sept. 18, 2012) (“When an interrogatory calls for an opinion, it ‘must
5 be phrased with particularity’ to avoid being an improper hypothetical.”) (citation omitted); *see also*
6 *Kendrick v. Sullivan*, 125 F.R.D. 1, 3 (D.D.C. 1989) (denying motion to compel responses to
7 hypothetical interrogatories because contention interrogatories must “relate to, or be applied to, a
8 *fact.*”)

10 Subject to and without waiving the foregoing objections, Google believes that no response
11 to this interrogatory is necessary because Google has not contended in this case that it could not
12 have turned on third-party cookie blocking by default in Chrome Incognito mode prior to June 2016.
13 Google reserves the right to supplement its response to this interrogatory if it does make such a
14 contention.
15

INTERROGATORY NO. 27:

17 Please explain why Google’s newly revised Terms of Service, effective January 5, 2022,
18 has removed the portion of the March 31, 2020 Terms of Service which states that the Google
19 Privacy Policy is “not part of these terms.”

RESPONSE TO INTERROGATORY NO. 27:

21 Google incorporates its General Objections as if set forth fully herein. Google further objects
22 to this request as seeking information that is neither relevant nor likely to lead to the discovery of
23 relevant information in light of the parties’ ongoing discussions regarding a stipulation addressing
24 Google’s January 5, 2022 Terms of Service. Google further objects to this Interrogatory to the
25 extent it is tailored to seek information protected by the attorney-client privilege, the work product
26 doctrine, or the common interest doctrine, or that is otherwise privileged or protected from
27 discovery.
28

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1 Subject to and without waiving the foregoing objections, Google responds as follows:

2 Google's revision to remove the phrase that the Google Privacy Policy is "not part of these
3 terms" is not a change that affects all of its Terms of Services globally. The inclusion of this phrase
4 was a requirement in the European Union ("EU") and the phrase is still included in the EU version
5 of Google's Terms of Service. Since there is no similar requirement for Google to include this
6 phrase in the United States, Google removed this phrase in its United States version of the Terms of
7 Service, effective January 5, 2022.

8 **INTERROGATORY NO. 28:**

9 Please explain in detail how Google uses the information collected when users within a
10 private browsing mode visit websites that use Google Analytics for purposes of ad targeting,
11 including remarketing.
12

13 **RESPONSE TO INTERROGATORY NO. 28:**

14 Google incorporates its General Objections as if set forth fully herein. Google further objects
15 to this interrogatory as overly broad and unduly burdensome, as it seeks information related to non-
16 putative class members, such as users who may be signed into their Google Account while using
17 Chrome Incognito mode. Google further objects to this interrogatory as seeking information that is
18 not in Google's custody, possession, or control to the extent it purports to seek information related
19 to private browsing modes on browsers other than Chrome.
20

21 Subject to and without waiving the foregoing objections, Google responds as follows:

22 Google is willing to meet and confer with Plaintiffs to understand the relevance and proper
23 scope, if any, of this request.
24

25 **INTERROGATORY NO. 29:**

26 If Google contends that it is impossible to redesign Chrome Incognito to prevent the
27
28

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1 Chrome browser from sending information to Google when a user visits a website that uses Google
2 services, such as Google Analytics or Google Ad Manager, please explain and identify all evidence
3 that You contend supports Your position.

RESPONSE TO INTERROGATORY NO. 29:

4
5 Google incorporates its General Objections as if set forth fully herein. Google further objects
6 to this interrogatory as vague and ambiguous as to the undefined term “information.” For the
7 purposes of this response, Google interprets this phrase to refer to (i) “[t]he ‘GET request’ sent from
8 the user’s computer to the website,” Dkt. 136-1 ¶ 63.a; (ii) “The IP address of the user’s connection
9 to the internet,” Dkt. 136-1 ¶ 63.b; (iii) “‘fingerprint’ data,” Dkt. 136-1 ¶ 63.c; (iv) “[a]ny ‘User-ID’
10 issued by the website to the user, if available,” Dkt. 136-1 ¶ 63.d; (v) “Geolocation of the user, if
11 available,” Dkt. 136-1 ¶ 63.e; and (vi) “[i]nformation contained in ‘Google cookies,’” Dkt. 136-1 ¶
12 63.f. Google further objects to this interrogatory as a premature contention interrogatory. Google
13 further objects to this interrogatory as overly broad and unduly burdensome, as it seeks information
14 related to signed-in users, who are not part of the putative class. Google further objects to this
15 interrogatory to the extent it seeks information on a hypothetical possibility, not Google’s actual
16 conduct. *See, e.g., Haggarty v. Wells Fargo Bank, N.A.*, 2012 WL 4113341, at *2 (N.D. Cal. Sept.
17 18, 2012) (“When an interrogatory calls for an opinion, it ‘must be phrased with particularity’ to
18 avoid being an improper hypothetical.”) (citation omitted); *see also Kendrick v. Sullivan*, 125 F.R.D.
19 1, 3 (D.D.C. 1989) (denying motion to compel responses to hypothetical interrogatories because
20 contention interrogatories must “relate to, or be applied to, a *fact*.”). Google further objects to this
21 Interrogatory as seeking irrelevant information because whether or not Chrome can be redesigned
22 to prevent sending information to Google is not relevant to a claim or defense in this action.
23
24
25

26 Subject to and without waiving the foregoing objections, Google believes that no response
27 to this interrogatory is necessary because Google has not contended in this case that it is impossible
28

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1 to redesign Chrome Incognito to prevent the Chrome browser from sending information to Google
2 when a user visits a website that uses Google services, such as Google Analytics or Google Ad
3 Manager. Google reserves the right to supplement its response to this interrogatory if it does make
4 such a contention.
5

6 DATED: January 20, 2022

QUINN EMANUEL URQUHART & SULLIVAN, LLP

7 By /s/ Andrew H. Schapiro

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26 *Attorneys for Defendant Google LLC*
27
28

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PROOF OF SERVICE

LOS ANGELES, CA

At the time of service, I was over 18 years of age and not a party to this action. I am employed in Los Angeles, CA. My business address is 865 S. Figueroa St., 10th Floor, Los Angeles, CA, 90017.

On January 20, 2022, I served true copies of the following document(s) described as **DEFENDANT GOOGLE LLC'S OBJECTIONS AND RESPONSES TO PLAINTIFFS' 7TH SET OF INTERROGATORIES (NOS. 21-29)** on the interested parties in this action as follows:

SEE ATTACHED LIST

BY E-MAIL OR ELECTRONIC TRANSMISSION: I transmitted PDF format copies of the document(s) described above to the e-mail addresses on the attached Service List pursuant to the agreement between the parties to serve discovery, in lieu of other service methods, by email under Fed. R. Civ. P. 5(b)(2)(E) (see Joint Case Management Statement § 8.b, Dkt. 44) and on non-parties pursuant to the Court's August 12, 2021 Cross-use and Discovery Coordination Orders issued in *Brown v. Google LLC*, Case No. 5:20-cv-03664-LHK-SVK (Dkt. 243) and *Calhoun v. Google*, Case No.: 5:20-cv-05146-LHK-SVK (Dkt. 263). The documents were transmitted by electronic transmission and such transmission was reported as complete and without error.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on January 20, 2022 at Los Angeles, CA.

/s/ Marie Hayrapetian
Marie Hayrapetian

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SERVICE LIST

Brown v. Google LLC

Case No. 5:20-cv-03664-LHK-SVK

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Calhoun v. Google LLC

Case No. 5:20-cv-5146-LHK-SVK

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EXHIBIT 42

NON-PARTY MOZILLA CORPORATION'S OBJECTIONS AND RESPONSE TO SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION OR OBJECTS

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6 Attorneys for Non-Party
MOZILLA CORPORATION
7
8
9
10

11 IN THE UNITED STATES DISTRICT COURT
12 FOR THE NORTHERN DISTRICT OF CALIFORNIA
13 SAN JOSE DIVISION

14 CHASOM BROWN, MARIA NGUYEN,
WILLIAM BYATT, JEREMY DAVIS, and
15 CHRISTOPHER CASTILLO, individually and on
16 behalf of all others similarly situated,

17 Plaintiffs,

18 v.

19 GOOGLE LLC,

20 Defendant.
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Case No. 5:20-CV-03664-LHK-SVK

**NON-PARTY MOZILLA CORPORATION'S
OBJECTIONS AND RESPONSE TO
SUBPOENA TO PRODUCE DOCUMENTS,
INFORMATION OR OBJECTS**

Pursuant to Rule 45 of the Federal Rules of Civil Procedure and any other applicable rules of law, Non-party Mozilla Corporation (“Mozilla”) responds and objects to Plaintiffs Chasom Brown, Maria Nguyen, William Byatt, Jeremy Davis, and Christopher Castillo’s (collectively, “Plaintiffs”) Document Request attached to its Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action (“Subpoena”) in the litigation styled *Chasom Brown, et al. v. Google, LLC*, Case No. 5:20-cv-03664 (N.D. Cal.) (the “Action”).

PRELIMINARY STATEMENT

Mozilla responds and objects based on its present knowledge. It reserves objections relating to any additional discovery and reserves the right to supplement, amend, or modify these objections and response.

GENERAL OBJECTIONS

Mozilla asserts the following objections as to the Subpoena and each and every Request:

1. Mozilla objects to the Subpoena and each and every Request to the extent that it seeks the production of documents or information protected by the attorney-client privilege, the work-product doctrine, the common interest privilege, or any other doctrine foreclosing compelled discovery. Nothing contained in these objections is intended as, or shall in any way be deemed, a waiver of any attorney-client privilege, attorney work-product protection, common interest privilege, or any other applicable privilege or doctrine. Mozilla will not provide information protected by any applicable privilege. Any disclosure of such information, inadvertent or otherwise, shall not be deemed a waiver of such protections.

2. Mozilla objects to the Subpoena and each and every Request to the extent it demands production of confidential or proprietary information including, without limitation, trade secrets. Mozilla will produce documents concerning such information only in accordance with any protective order in the Action.

3. Mozilla objects to the Subpoena and each and every Request to the extent any part of it seeks to impose on Mozilla obligations greater than those provided by law.

4. Mozilla objects to the Subpoena and each and every Request to the extent that it purports to impose a burden of providing information not in Mozilla’s possession, custody, or control or which

cannot be found in the course of a reasonable search.

5. Mozilla objects to the Subpoena and each and every Request to the extent it seeks restoration or de-archiving of data not readily accessible in the ordinary course of business.

6. A representation that Mozilla will produce copies of non-privileged, responsive documents that are within its possession, custody, or control is not a representation that any such documents exist.

8. The fact that Mozilla has responded to part or all of a Request is not intended to and shall not be construed as a waiver by Mozilla of any objection to such Request.

9. Mozilla's response and objections do not constitute any agreement by Mozilla with any of the Definitions set forth in the Requests. To the extent Mozilla uses those Definitions, it does so only for purposes of clarity and consistency.

10. Mozilla objects to the Definitions and Instructions to the extent they (i) are vague or ambiguous; (ii) are overly broad or unduly burdensome; (iii) are inconsistent with the ordinary meaning of the words or phrases they purport to define; (iv) seek to impose obligations different from or beyond those required under the Federal Rules of Civil Procedure, under the Local Rules for the Northern District of California, or by this Court; (v) include assertions of purported fact that are inaccurate or disputed by Mozilla or the parties to the Action; or (vi) incorporate other Definitions or Instructions that have these defects. In responding, Mozilla will adhere to the applicable rules, not to the Definitions and Instructions.

11. All of these general objections are incorporated into each individual response set forth below. The responses below are made subject to and without waiving these general objections.

SPECIFIC OBJECTIONS TO REQUEST FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 1:

ALL DOCUMENTS sufficient to IDENTIFY all individuals who have used a Private Window or Private Browsing mode in Firefox from June 1, 2016 to the present.

RESPONSE TO REQUEST FOR PRODUCTION NO. 1:

In addition to its General Objections, Mozilla objects to this Request on the grounds that it is overbroad, unduly burdensome, and seeks discovery neither relevant to the claims or defenses of any

1 party nor proportional to the needs of the Action.

2 Mozilla also objects to this Request as overbroad to the extent it seeks “ALL DOCUMENTS
3 sufficient to IDENTIFY all individuals” and relies on Plaintiffs’ definition of “IDENTIFY.”

4 Mozilla also objects to this Request as unduly burdensome to the extent it seeks information that
5 is in the possession, custody, or control of the parties in the Action or is available from public sources.

6 Mozilla also objects to this Request to the extent it seeks information protected by the attorney-
7 client privilege, work-product doctrine, or common interest privilege or any other applicable privilege or
8 immunity.

9 Mozilla also objects to this request as calling for the production of private and confidential
10 information of third-party users without adequate justification.

11 In light of its objections, Mozilla responds as follows: Mozilla does not possess documents or
12 information sufficient to ascertain the identity of individuals who have used a Private Window or Private
13 Browsing mode in Firefox. In view of the foregoing, Mozilla will not be producing any documents.

14
15 Dated: August 27, 2021

DURIE TANGRI LLP

16
17 By: /s/ Joseph C. Gratz
JOSEPH C. GRATZ

18
19 Attorneys for Non-Party MOZILLA CORPORATION
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PROOF OF SERVICE

I am employed in San Francisco County, State of California, in the office of a member of the bar of this Court, at whose direction the service was made. I am over the age of eighteen years, and not a party to the within action. My business address is 217 Leidesdorff Street, San Francisco, CA 94111.

On August 27, 2021, I served the following documents in the manner described below:

NON-PARTY MOZILLA CORPORATION'S OBJECTIONS AND RESPONSE TO SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION OR OBJECTS



BY ELECTRONIC SERVICE: By electronically mailing a true and correct copy through Durie Tangri's electronic mail system from mrubalcaba@durietangri.com to the email addresses set forth below.

On the following part(ies) in this action:

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Attorneys for Defendant
GOOGLE LLC

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on August 27, 2021, at San Francisco, California.


Mary Ann Rubalcaba

EXHIBIT 43

**9/20/21 Letter from
Apple to Brown Counsel**



Via Email Delivery
September 20, 2021

Ryan J. McGee
MORGAN & MORGAN
201 N. Franklin Street
Tampa, FL - Florida 33602

Re: CHASOM BROWN, et al. v. GOOGLE, LLC

Dear Counsel,

I am writing on behalf of Apple Inc. ("Apple") with regard to the subpoena in the above-referenced matter. This subpoena was received at Apple on August 13, 2021. After completing a review, Apple responds on the following grounds:

(1) Apple is not in possession of the requested records

Apple does maintain documents sufficient to "IDENTIFY all individuals who have used a Private Window or Private Browsing mode in Safari..." and therefore has no documents to provide.

Through correspondence by this letter, Apple does not intend to waive any other applicable objections, including personal jurisdiction.

Sincerely,

A handwritten signature in dark ink, appearing to read "Sean Pinner", is located below the "Sincerely," text.

Sean Pinner
Corporate Counsel
Privacy & Law Enforcement Compliance
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<https://www.apple.com/privacy/docs/legal-process-guidelines-us.pdf>

EXHIBIT 44

THIRD-PARTY RESPONDENT MICROSOFT CORPORATION'S OBJECTIONS AND RESPONSES TO PLAINTIFFS' SUBPOENA

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*Attorneys for Third-Party Respondent
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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

CHASOM BROWN, MARIA NGUYEN,
WILLIAM BYATT, JEREMY DAVIS, and
CHRISTOPHER CASTILLO, individually and on
behalf of all others similarly situated,

Plaintiffs,

v.

GOOGLE LLC,

Defendant.

Civil Case No. 5:20-cv-03664-LHK

**THIRD-PARTY RESPONDENT
MICROSOFT CORPORATION'S
OBJECTIONS AND RESPONSES TO
PLAINTIFFS' SUBPOENA**

1 Pursuant to Rule 45 of the Federal Rules of Civil Procedure, Third-Party Respondent Microsoft
2 Corporation, by and through undersigned counsel, submits the following objections and response to
3 Plaintiffs Chasom Brown et al.'s Subpoena to Produce Documents.

4 **RESERVATION OF RIGHTS**

5 Microsoft responds to the Subpoena to the best of its knowledge at the present time and reserves
6 the right at any time to supplement, amend, correct, or clarify its responses and objections, but
7 undertakes no obligation to do so beyond the obligations imposed by the Federal Rules of Civil
8 Procedure, the Local Rules of this Court, and other applicable orders or rules. Any supplemental or
9 amended response shall not function as a waiver of any privilege or objection Microsoft has or may
10 assert. Any response to the Subpoena or a production of documents or things made by Microsoft will be
11 solely for the purpose of this action, without waiving or intending to waive, but, on the contrary,
12 preserving and intending to preserve: (a) the right to object on any grounds, at any time, to other
13 discovery requests relating to the subject of the Subpoena to which Microsoft has responded; (b) the
14 right to object, on the grounds of competency, privilege, relevancy, materiality, confidentiality,
15 authenticity, admissibility, or any other proper grounds, to the use of the responses, documents, or
16 information provided by Microsoft as evidence for any purpose, in whole or in part, in any subsequent
17 proceeding, or in any trial in this action or any other action; and (c) the right at any time to revise,
18 correct, supplement, or clarify Microsoft's responses or objections. That Microsoft has objected or
19 responded to the Subpoena is not and should not be taken as an admission that Microsoft accepts or
20 admits the existence of any fact set forth in or assumed by the Subpoena, or as an indication that
21 Microsoft agrees with or adopts any characterization or statement within the Subpoena.

22 **OBJECTIONS TO PLAINTIFFS' DEFINITIONS & INSTRUCTIONS**

23 1. Microsoft objects to the "Definitions" and "Instructions" to the extent they seek to
24 impose obligations beyond or inconsistent with those imposed by the Federal Rules of Civil Procedure,
25 the Local Rules of this Court, and/or the terms of the Stipulated Protective Order between Plaintiffs and
26 Defendant Google LLC, or between any parties to the above-captioned action.
27
28

2. Microsoft objects to Definition A (Definition of “All”) and Instruction 1(c) as overly broad and unduly burdensome because they seek to require Microsoft to produce “any and all” of the requested material, which courts consistently agree is “overbroad and impermissible.” *Henry v. Morgan’s Hotel Grp., Inc.*, 2016 WL 303114, at *2 (S.D.N.Y. Jan. 25, 2016) (“Blanket requests of this kind are plainly overbroad and impermissible.”); *Belling v. DDP Holdings, Inc.*, 2013 WL 12140986, at *3 (C.D. Cal. May 30, 2013) (“blanket requests” for “any and all documents” are “overbroad on their face”).

3. Microsoft objects to Definition B (Definition of “Document”) to the extent the definition goes beyond or is inconsistent with the definition in Fed. R. Civ. P. 34. Microsoft will interpret “Document” as defined in the Rule 34.

4. Microsoft objects to Definition C (Definition of “Identify”) as unduly burdensome and disproportionate to the extent that the listed categories of information cannot be associated with or linked to a specific individual or Google user.

5. Microsoft objects to Definition D (Definition of “You” and “Your”) on the grounds of overbreadth, undue burden, and proportionality, and as seeking privileged information, to the extent it seeks information outside the possession, custody, or control of Microsoft through references to “attorneys, agents, representatives, predecessors, successors, assigns, and anyone acting or purporting to act on [Microsoft’s] behalf.” Microsoft will interpret “You” and “Your” to mean the third-party respondent, Microsoft Corporation.

6. Microsoft objects to Instructions 10–12 as overbroad, unduly burdensome, and not proportional to the needs of the case to the extent they purport to seek information not in Microsoft’s possession, custody, or control.

DOCUMENT REQUEST

REQUEST FOR PRODUCTION NO. 1

ALL DOCUMENTS sufficient to IDENTIFY all individuals who have used InPrivate Browsing mode in Microsoft IE/Edge from June 1, 2016 to the present.

RESPONSE TO REQUEST FOR PRODUCTION NO. 1

Microsoft objects to this Request because it calls for the disclosure of information that, if available at all, is sensitive, confidential, or proprietary information, or information protected by the right to privacy for which no such substantial need has been demonstrated. Microsoft further objects to this Request as overbroad, unduly burdensome, and not proportional to the needs of the case because it seeks information (the identity of members of a putative class) that, if available at all, should be sought from parties to the litigation. Microsoft further objects to this Request as overbroad, unduly burdensome, not proportional to the needs of the case, and not likely to lead to the discovery of relevant evidence because it seeks information that, if available at all, has no apparent relation to the claims in the case or the class plaintiff seeks to certify. Microsoft further objects to this Request as overly broad, unduly burdensome, not proportional to the needs of the case, not likely to lead to the discovery of relevant evidence, and as seeking information that is not reasonably accessible, to the extent it purports to require Microsoft to create documents that do not otherwise exist. Microsoft further objects to this Request to the extent it calls for the production of data or information in a form that is not maintained and readily accessible in the usual course of business.

Based on these objections, and based on its investigation to date, Microsoft responds it does not have documents responsive to the Request. Microsoft will supplement this response if necessary as its investigation proceeds.

Dated: August 27, 2021

COVINGTON & BURLING LLP

By: /s/ Emily Johnson Henn
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*Attorneys for Third-Party Respondent
Microsoft Corporation*

PROOF OF SERVICE

I declare that I am an attorney with the law firm of Covington & Burling LLP, whose address is Salesforce Tower 415 Mission Street, Suite 5400 San Francisco, CA 94105-2533. I am over the age of eighteen years and not a party to this action. On August 27 2021, I caused a true and correct copy of the foregoing document to be served on counsel for plaintiff in this action via electronic mail addressed as follows:

| | |
|---|---|
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I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

DATED: August 27, 2021

By: /s/ Jenna L. Zhang
Jenna L. Zhang

EXHIBIT 45

**6/16/21 Glenn
Berntson 30(b)(6)
Deposition
Transcript Excerpts**

**Redacted Version of
Document Sought to
be Sealed**

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

- - -

CHASOM BROWN, WILLIAM : Case No.
BYATT, JEREMY DAVIS, :
CHRISTOPHER CASTILLO : 5:20-cv-03664-
and MONIQUE TRUJILLO, : LHK
individually and :
on behalf of all other :
similarly situated, : CONFIDENTIAL
:
Plaintiffs, :
:
v. :
GOOGLE, LLC, :
:
Defendant. :

- - -

Wednesday, June 16, 2021

- - -

Videotaped 30(b)(6) deposition of
GLENN BERNTSON held pursuant to notice,
beginning at 10:27 AM, on the above date,
and recorded stenographically by
Constance S. Kent, a Certified Court
Reporter, Registered Professional
Reporter and Notary Public.

* * *

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17
18 Jay Bhatia
19
20 Chris Thompson, 233 Analytics, LLC
21
22 Adam Depew, Video Specialist
23
24 Noah Fox, Trial Technician

1 order to be able to represent that ID
2 within Double, we have to create a device
3 representation that looks like a
4 Biscotti, which we call a mapped
5 Biscotti, which is maintained in the
6 mapping table.

7 So in the second case, the
8 Biscotti is named Biscotti purely because
9 it's an N64, but it's never shared with a
10 client. That mapping is simply allowing
11 us to -- to use a representation, to
12 represent the device ID as an N64.

13 Q. I see. So -- so in -- in
14 the instance in which I, for example, on
15 Chrome open up an incognito mode session,
16 okay, I presume that Biscotti ID that's
17 generated on -- on the browser side --
18 I'm sorry, that's generated on the server
19 side, I presume that would be a different
20 Biscotti than whatever they would have
21 had in their normal Chrome browsing mode;
22 is that correct?

23 MR. BROOME: Object to the
24 form.

1 THE WITNESS: When you
2 create an incognito session, the
3 incognito session starts off with
4 an empty cookie jar that is not
5 shared with anything else on your
6 device. So yes, when an ad
7 request is made from an incognito
8 session for the first time, there
9 is no Biscotti, so it will
10 generate a brand new Biscotti that
11 has no mapping to anything else.

12 BY MR. MAO:

13 Q. And what happens on these
14 mapping tables where you have a device ID
15 mapped to a browser ID, is there no
16 mapping there in this instance for
17 incognito?

18 A. All device IDs are
19 represented internally as mapped
20 Biscottis but when we have a Biscotti
21 past direct -- you know, that we generate
22 a Biscotti for a browser and then we
23 receive the actual Biscotti from the
24 browser, there's no mapping necessary

1 because we have the Biscotti.

2 Q. Okay. So in what state in
3 incognito does the incognito Biscotti get
4 mapped to the device ID?

5 A. It doesn't.

6 Q. What about deep link, for
7 example?

8 A. Deep link doesn't require
9 that you have a device ID.

10 Q. But if I click on a deep
11 link incognito and it opens up a native
12 app that I have on my phone, does it then
13 create a matching table between the
14 incognito Biscotti and the device ID?

15 A. I don't understand your
16 question. I'm trying to parse -- I'm
17 trying to figure out how to respond to
18 it, but I don't think I really understand
19 your question. Can you try that again?

20 Q. Okay. So I'm trying to
21 understand when you open a deep link from
22 your browser, let's say Chrome on
23 Android, okay, if I open a deep link and
24 that deep link links to essentially what

1 would have been initially, I guess,
2 initiated as a view on my native app,
3 does that create a linking between the
4 device ID and the Biscotti ID? A
5 mapping. Sorry, a mapping between
6 Biscotti ID and the device ID.

7 A. No.

8 Q. So in terms of an incognito
9 Biscotti, how is that Biscotti treated in
10 terms of the Double, I guess you call it,
11 storage tables on [REDACTED]. What generally
12 happens to Biscottis generated in
13 incognito mode?

14 A. They're treated like any
15 other Biscotti. Ads doesn't know whether
16 an ad request is coming from a brow --
17 from a Chrome browser in incognito mode
18 or not.

19 Q. Does Google Analytics know
20 whether or not a -- I guess a URL or a
21 packet is in incognito or not?

22 MR. BROOME: Object to the
23 form.

24 THE WITNESS: No.

1 BY MR. MAO:

2 Q. Sorry, what was your answer?

3 A. No.

4 Q. So other than -- other than
5 a lack of X-Client-Data header and a non-
6 shared cookie jar, does Google treat
7 incognito browsing sessions any
8 differently than other browsing sessions?

9 MR. BROOME: Object to the
10 form.

11 THE WITNESS: Incognito mode
12 was designed so that no system
13 like ads or Google Analytics can
14 know whether or not you're in
15 incognito mode, and that means
16 no -- a Google Analytics installed
17 on a publisher site that is
18 rendering for the first time in an
19 incognito browser will set the
20 first-party ID, the CID, and then
21 pass that back, and so this will
22 look like a different user to
23 Google Analytics.

24 And a similar phenomenon

1 will happen for Biscotti in that
2 when an ad request is made and
3 there's no Biscotti present, then
4 we will create a new Biscotti,
5 send it back and it will be set in
6 the incognito browser with the
7 exception that if the user has
8 disabled third-party cookies in
9 the context of entering incognito
10 mode, then we are unable to set
11 the Biscotti cookies so there will
12 not be a Biscotti cookie in
13 incognito mode.

14 Because Google Analytics
15 sets just first-party cookies,
16 they are able to create and set
17 the CID.

18 BY MR. MAO:

19 Q. Okay. So prior to the
20 Chrome browser turning on block
21 third-party cookies as a default state
22 for incognito, prior to that, Google Ad
23 Manager was generally able to detect
24 whether or not there was a third-party

1 rights for what?

2 MR. MAO: I'm reserving my
3 rights to ask additional questions
4 of a witness that's properly
5 prepared to testify to the topics,
6 including the topics which the
7 court had actually ordered.

8 MR. BROOME: Okay. But you
9 don't have any more questions for
10 Mr. Berntson?

11 MR. MAO: Disagree. I don't
12 know.

13 MR. BROOME: You don't know
14 if you have any more questions for
15 him?

16 MR. MAO: Steve, stop
17 burning my time.

18 MR. BROOME: Do you have any
19 more questions for Mr. Berntson?

20 MR. MAO: I'm pausing my
21 portion.

22 MR. BROOME: Okay. I'm
23 going to take that as a no.
24 Did -- can I -- can I ask my

1 questions now? I'm going to take
2 your silence, your non-response as
3 a yes.

4 - - -

5 E X A M I N A T I O N

6 - - -

7 BY MR. BROOME:

8 Q. Mr. Berntson, do you recall
9 that Mr. Mao asked you some questions
10 today about Google mapping Biscotti IDs
11 and [REDACTED] and conversion
12 tracking?

13 A. Yes.

14 Q. And I believe you testified
15 that mapping in [REDACTED] requires a
16 Gaia ID; is that -- is that right?

17 A. That is correct.

18 Q. For the dataflow that's at
19 issue in this case where users are on
20 their browsers, they're signed out of
21 their Google accounts, they're in private
22 browsing mode, would there be any mapping
23 from Gaia to Biscotti?

24 A. No, because when you go into

1 private browsing mode, you start off with
2 a completely empty cookie jar. A
3 Biscotti is created, and if you don't
4 sign in to Google, there's no Gaia to map
5 that new Biscotti to. The Biscotti that
6 is present on the non-incognito browser
7 instance is not shared with the incognito
8 browser instance so there's no way of
9 creating that mapping from an incognito
10 session.

11 Q. Okay. And -- and conversely
12 would there be any mapping from Biscotti
13 to Gaia under those same conditions?

14 A. No. Again for similar
15 reasons, there is no Gaia to map that
16 Biscotti to.

17 Q. Mr. Mao asked -- also asked
18 you a number of questions about the
19 X-Client-Data header.

20 Do you recall that?

21 A. Yes.

22 Q. Do you understand that the
23 plaintiffs in this case have proposed
24 that Google could use the absence of the

1 X-Client-Data header to identify users
2 who are in incognito mode?

3 A. Yes.

4 Q. And does Google use the
5 absence of the X-Client-Data header to
6 identify users who are in incognito mode?

7 A. No.

8 Q. And would that be a good way
9 to identify incognito users?

10 A. No.

11 Q. And why is that?

12 A. Because there are cases that
13 will lead to false positives; that is,
14 where you see an empty X-Client-Data
15 header and you assume it's incognito but
16 not and false negatives where the reverse
17 is also true. There are processes that
18 can result in empty client -- empty
19 X-Client-Data headers and to take an
20 empty client -- X-Client-Data header and
21 populate values.

22 Q. Can you give us a couple of
23 examples?

24 A. Sure. For the first case

EXHIBIT 46

**12/14/2021
GREGORY FAIR
VOL. 1
DEPOSITION
TRANSCRIPT
EXCERPTS**

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

---o0o---

PATRICK CALHOUN, et al.,)
on behalf of themselves and)
all others similarly)
situated,)

Plaintiffs,

) Case No.

) 5:20-cv-5146-LHK-SVK

vs.)

GOOGLE LLC,)

Defendant.)

-----)
CHASOM BROWN, et al.,)
on behalf of themselves and)
all others similarly)
situated,)

Plaintiffs,

) Case No.

) 5:20-cv-03664-LHK

vs.)

GOOGLE LLC,)

Defendant.)

---o0o---

Videotaped Zoom Deposition of
GREGORY LON FAIR
CONFIDENTIAL, ATTORNEYS' EYES ONLY
Tuesday, December 14, 2021

---o0o---

Job no. 4974024
Katy E. Schmidt
RPR, RMR, CRR, CSR 13096
Pages 1 - 216

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

---o0o---

PATRICK CALHOUN, et al.,)
on behalf of themselves and)
all others similarly)
situated,)

Plaintiffs,) Case No.

) 5:20-cv-5146-LHK-SVK

vs.)

GOOGLE LLC,)

Defendant.)

CHASOM BROWN, et al.,)
on behalf of themselves and)
all others similarly)
situated,)

Plaintiffs,) Case No.

) 5:20-cv-03664-LHK

vs.)

GOOGLE LLC,)

Defendant.)

_____)

BE IT REMEMBERED that, pursuant to Notice, and
on Tuesday, the 14th day of December, 2021, commencing
at the hour of 11:43 a.m., thereof, in Los Altos,
California, before me, KATY E. SCHMIDT, a Certified
Shorthand Reporter in and for the County of Yolo, State
of California, there virtually personally appeared
GREGORY LON FAIR
called as a witness herein, who, being by me first duly
sworn, was thereupon examined and interrogated as
hereinafter set forth.

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8 Also present:

9 David West, Videographer

10 Fatemah Shirzad, Concierge

11
12 ---o0o---

1 me out of bed and going to work and trying to make a 01:44
2 change. 01:44
3 At the same time, this particular space is 01:44
4 extremely complicated, and I've often found there isn't 01:44
5 one right answer or wrong answer for how to move 01:44
6 forward. But as written, this isn't the way I would 01:44
7 phrase it, no. 01:44
8 BY MR. MCGEE: 01:44
9 Q. Okay. Well, the incognito splash screen says 01:44
10 "Who can see your data"; correct? It's internet service 01:44
11 providers, educational institutions -- I'm sorry -- 01:44
12 there's a list of individuals. 01:45
13 Google is not listed on that; correct? 01:45
14 MS. TREBICKA: Objection. The document speaks 01:45
15 for itself. Objection to form. 01:45
16 Go ahead. 01:45
17 THE WITNESS: I believe the words you just 01:45
18 used weren't perfectly representative of the language on 01:45
19 the current incognito splash screen. 01:45
20 BY MR. MCGEE: 01:45
21 Q. Sure. I've got that now. 01:45
22 So it's "Your activity might still be visible 01:45
23 to websites you visit, your employer or school, your 01:45
24 internet service provider." 01:45
25 Those are the three. 01:45

1 So going back to your testimony in saying -- 01:45
2 let me find it exactly -- "I'm generally supportive of 01:45
3 the ideas of doing more wherever to help consumers of 01:45
4 all our products, including their privacy states, to be 01:46
5 more protective where appropriate." 01:46

6 So my question to you is: Did Google ever 01:46
7 consider -- with your work with Google, did Google ever 01:46
8 consider listing itself as one of the entities that your 01:46
9 activity might still be visible to on that incognito 01:46
10 splash screen? 01:46

11 MS. TREBICKA: Objection. Assumes facts. 01:46

12 THE WITNESS: I've worked on a lot of 01:46
13 different type of user disclosures around how 01:46
14 information is used in a lot of different form factors, 01:46
15 everything from kind of consent screens as part of 01:46
16 larger flows, notifications to users about a very 01:46
17 specific event or larger events, creating e-mails to 01:46
18 users that encourage them to review certain settings. 01:46

19 And the thing that I've very consistently 01:46
20 observed is that striking the right balance between 01:46
21 saying everything, as you would in a privacy policy, and 01:47
22 saying just enough for people to understand in whatever 01:47
23 context where they're landing, is a tricky balance to 01:47
24 find. 01:47

25 I think that the Chrome incognito landing page 01:47

1 doesn't say that your activity might still be visible to 01:47
2 somebody standing next to you. 01:47
3 There is an almost infinite list of potential 01:47
4 things that could be included there. And I think it 01:47
5 would be interesting to consider if you were calling out 01:47
6 one particular group, if you didn't need to also then 01:47
7 start to include a number of other ones. Kind of like, 01:47
8 you know, a wedding, you invite one cousin, you've gotta 01:47
9 invite the rest. 01:47
10 The balance of the right amount of words and 01:47
11 the right set of points to put in front of people is 01:47
12 really tricky to get right, and we've been doing our 01:47
13 best on that to make that clear. 01:47
14 I think the addition of more information can 01:47
15 create a more difficult-to-comprehend message. And so I 01:47
16 think the balance is the way we've always thought about 01:48
17 this. And then reinforce it with additional messaging, 01:48
18 with layered messaging, with proactive messaging in a 01:48
19 number of cases, wherever we can. 01:48
20 BY MR. MCGEE:
21 Q. Right. 01:48
22 But the activity, it's not even that it might 01:48
23 still be visible. It's that it's always going to be 01:48
24 visible to Google; correct? 01:48
25 You gave the example of someone standing next 01:48

1 to you might see some of your activity when you go 01:48
2 incognito, but Google continues to collect all of that 01:48
3 information; correct? 01:48
4 MS. TREBICKA: Objection to form. 01:48
5 Go ahead. 01:48
6 THE WITNESS: That doesn't match my technical 01:48
7 understanding of the way browsers work. 01:48
8 BY MR. MCGEE: 01:48
9 Q. What is your technical understanding of how 01:48
10 Chrome works while in incognito mode as it relates to 01:48
11 Google's collection? 01:48
12 MS. TREBICKA: Objection. Overbroad. Lacks 01:48
13 foundation. 01:48
14 THE WITNESS: I'm not an engineer, but if you 01:49
15 took a more generic definition of browsing through 01:49
16 websites and weren't even talking specifically about 01:49
17 Chrome, there are a number of websites that Google has 01:49
18 no presence on where Google would have no opportunity to 01:49
19 interact. 01:49
20 There are also a number of cases where simply 01:49
21 for -- in order to display information based on the 01:49
22 requested user of a site, if you go to whatever site you 01:49
23 wanted to go to, whether it was Bing or Apple dot com, 01:49
24 right, you would need to -- the browser would actually 01:49
25 need to actually function and to serve up the page, 01:49

REPORTER'S CERTIFICATE

---o0o---

STATE OF CALIFORNIA)
) ss.

COUNTY OF YOLO)

I, KATY E. SCHMIDT, a Certified Shorthand
Reporter in and for the State of California, duly
commissioned and a disinterested person, certify:

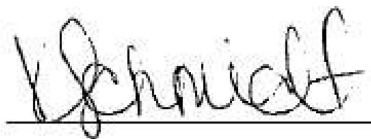
That the foregoing deposition was taken before me
at the time and place herein set forth;

That GREG FAIR, the deponent herein, was put on
oath by me;

That the testimony of the witness and all
objections made at the time of the examination were
recorded stenographically by me to the best of my
ability and thereafter transcribed into typewriting;

That the foregoing deposition is a record of the
testimony of the examination.

IN WITNESS WHEREOF, I subscribe my name on this
17th day of December, 2021.



Katy E. Schmidt, RPR, RMR, CRR, CSR 13096
Certified Shorthand Reporter
in and for the
County of Sacramento,
State of California

Ref. No. 4974024 KES

1 LESLEY WEAVER, Esq.

2 lweaver@bfalaw.com

3 December 17, 2021

4 RE: PATRICK CALHOUN vs. GOOGLE LLC

5 12/14/2021, GREGORY LON FAIR, JOB NO. 4974024

6 The above-referenced transcript has been
7 completed by Veritext Legal Solutions and
8 review of the transcript is being handled as follows:

9 ___ Per CA State Code (CCP 2025.520 (a)-(e)) - Contact Veritext
10 to schedule a time to review the original transcript at
11 a Veritext office.

12 ___ Per CA State Code (CCP 2025.520 (a)-(e)) - Locked .PDF
13 Transcript - The witness should review the transcript and
14 make any necessary corrections on the errata pages included
15 below, notating the page and line number of the corrections.
16 The witness should then sign and date the errata and penalty
17 of perjury pages and return the completed pages to all
18 appearing counsel within the period of time determined at
19 the deposition or provided by the Code of Civil Procedure.

20 ___ Waiving the CA Code of Civil Procedure per Stipulation of
21 Counsel - Original transcript to be released for signature
22 as determined at the deposition.

23 ___ Signature Waived - Reading & Signature was waived at the
24 time of the deposition.

25

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EXHIBIT 47

**12/20/2021
WILLIAM BYATT
DEPOSITION
TRANSCRIPT
EXCERPTS**

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA
3 SAN JOSE DIVISION

4 CHASOM BROWN, WILLIAM BYATT,
5 JEREMY DAVIS, CHRISTOPHER
6 CASTILLO, and MONIQUE TRUJILLO,
7 individually and on behalf of
8 all other similarly situated

9 Plaintiffs, CASE NO.
10 5:20-CV-03664-LHK-SVK
11 VS.

12 GOOGLE LLC
13 Defendant.

14 *****
15 ZOOM VIDEOTAPED DEPOSITION OF WILLIAM BYATT
16 December 20, 2021
17 11:04 a.m. EST
18 *****

19 TAKEN BY:
20 VIOLA TREBICKA, ESQ.
21 ATTORNEY FOR DEFENDANT

22 REPORTED BY:
23 BELLE VIVIENNE, CRR
24 CERTIFIED STENOGRAPHIC
25 REALTIME COURT REPORTER
VERITEXT LEGAL SOLUTIONS
JOB NO. 5001125
866 299-5127

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I N D E X
- - -

Testimony of:

WILLIAM BYATT

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| Exhibit 2 | The New York Times Privacy Policy, Updated July 1, 2021..... | 50 |
| Exhibit 3 | Google Analytics Opt-out Browser Add-on document.... | 70 |
| Exhibit 4 | Twitter Privacy Policy..... | 76 |
| Exhibit 5 | Google Ad Personalization Settings..... | 88 |

1 Chrome, so when I think about private 11:09:59
2 browsing, I think about the Incognito 11:10:01
3 modem, that little splash screen that 11:10:06
4 comes up and tells me what I'm sharing and 11:10:08
5 opening Incognito is agreeing to that 11:10:10
6 splash screen. 11:10:15

7 Q. So if you're aware that your 11:10:17
8 information is being shared with a 11:10:18
9 particular party and you continue to 11:10:20
10 browse so that your information is shared, 11:10:24
11 that means that you understand your 11:10:26
12 information will be shared, correct? 11:10:29

13 MR. LEE: Objection to form. 11:10:32

14 A. I -- I'm -- I'm not sure I 11:10:34
15 understood that question. Could you -- 11:10:36
16 BY MS. TREBICKA: 11:10:36

17 Q. That was -- you're right. That 11:10:37
18 was not a very good question. Let me 11:10:39
19 withdraw it and ask you -- so you 11:10:41
20 mentioned Incognito browsing, right? 11:10:43

21 A. Uh-huh. 11:10:47

22 Q. What do you understand -- and, 11:10:47
23 sorry. Just one more thing, because the 11:10:47
24 court reporter will be taking down 11:10:50
25 everything that we say, while in common 11:10:52

1 speech, it -- it's all right and I 11:10:56
2 understand what you mean when you say 11:10:59
3 uh-huh or something that's not verbal. 11:11:01
4 Please do verbalize your answers for the 11:11:04
5 court reporter. 11:11:07
6 A. I may require reminders, but 11:11:07
7 I'll certainly try. 11:11:10
8 Q. I will remind you. 11:11:11
9 So you -- earlier you talked 11:11:12
10 about private -- about Incognito, correct? 11:11:14
11 A. I did, yes. 11:11:19
12 Q. So you do browsing in Incognito, 11:11:20
13 correct? 11:11:22
14 A. Yes. 11:11:22
15 Q. Do you continue to browse in 11:11:23
16 Incognito today? 11:11:25
17 A. Occasionally, yes. 11:11:25
18 Q. How often, presently, how often 11:11:28
19 do you browse? 11:11:32
20 A. That I wouldn't be able to tell 11:11:33
21 you. I don't particularly keep track. 11:11:36
22 Certainly -- yeah, I don't think I could 11:11:40
23 say with specificity. It comes in fits 11:11:46
24 and bursts. You know, sometimes I might 11:11:49
25 spend several hours browsing multiple days 11:11:52

1 in a week and sometimes I might go weeks 11:11:58
2 without opening it. 11:12:01

3 Q. And when you say "it," you mean 11:12:02
4 Incognito? 11:12:04

5 A. I mean Incognito, yes. 11:12:05

6 Q. Understood. Have you changed 11:12:06
7 your browsing behavior on Incognito since 11:12:07
8 the filing of this lawsuit? 11:12:10

9 A. I have wanted to. I may have 11:12:12
10 some, but I felt that it would be best to 11:12:16
11 try to continue my behavior as sort of 11:12:20
12 normally as possible. I'm not sure how 11:12:24
13 effective that is with sort of the -- the 11:12:29
14 awareness and thinking about this more. 11:12:34
15 But it's been -- it's been roughly pretty 11:12:35
16 similar. 11:12:40

17 Q. You say you -- that you have 11:12:40
18 tried to -- or you said that you -- it 11:12:43
19 would be best to try to continue your 11:12:47
20 behavior as normal. 11:12:48

21 What do you mean by that? 11:12:51

22 A. Yeah. So when -- when this 11:12:52
23 lawsuit is over, I will probably quit 11:12:53
24 using Chrome altogether, but I have felt 11:12:58
25 that for -- you know, I've been advised by 11:13:03

1 my attorneys -- 11:13:08

2 MR. LEE: Hold on. Hold on. 11:13:09

3 So let me just give you a quick 11:13:11

4 instruction. It is -- in these 11:13:14

5 depositions, you should not reveal any 11:13:16

6 communications you've had with your 11:13:18

7 attorneys. 11:13:20

8 THE WITNESS: Okay. 11:13:20

9 MR. LEE: So if you can answer 11:13:21

10 this question without revealing any 11:13:22

11 communications that you've had with 11:13:23

12 any of your attorneys, happy for you 11:13:24

13 to do that; if you can't, then don't 11:13:29

14 answer the question. 11:13:30

15 THE WITNESS: Okay. 11:13:31

16 A. But, yeah. So it -- it has 11:13:32

17 seemed as though continuing to behave as 11:13:33

18 normally as possible until the end of the 11:13:37

19 lawsuit is what would make the most sense. 11:13:40

20 BY MS. TREBICKA: 11:13:40

21 Q. And what do you understand by 11:13:46

22 the term "Incognito browsing"? 11:13:47

23 A. I understand it to mean -- well, 11:13:51

24 first of all, what Google tells me it 11:13:53

25 means when I open it and there's this 11:13:56

1 A. I -- I -- I am, first of all, 11:19:10
2 not 100 percent certain. I am, by no 11:19:15
3 means, you know, an expert in -- I don't 11:19:18
4 know personally identifiable information 11:19:22
5 or how those systems work, but I would 11:19:24
6 think that, information that is about me, 11:19:28
7 that is what I'm doing, is not anonymous 11:19:37
8 if -- if they know that I'm doing 11:19:44
9 something or that my property or my 11:19:46
10 computers or my Internet connections are 11:19:49
11 doing something, that I -- that doesn't 11:19:50
12 seem anonymous. 11:19:53

13 BY MS. TREBICKA: 11:19:53

14 Q. And it's fair to say, Mr. Byatt, 11:20:14
15 that maintaining the privacy of your 11:20:16
16 information is important to you while 11:20:18
17 you're browsing the Internet? 11:20:19

18 A. Yes. You know, I do voluntarily 11:20:21
19 share information at times. So it's not, 11:20:28
20 you know an absolute at all times. But I 11:20:34
21 think, you know, sort of perhaps more than 11:20:37
22 privacy, which is important, is consent to 11:20:40
23 what information is being shared. I want 11:20:44
24 to know with what of my information is 11:20:46
25 being shared and I want to agree to that 11:20:48

1 information being shared. 11:20:50

2 Q. How -- what steps do you take to 11:20:55

3 know that certain information is -- about 11:20:58

4 you is being shared when you browse? 11:21:00

5 A. I -- as a -- as a rule, I tend 11:21:03

6 to read, you know, privacy policies, terms 11:21:06

7 of service, things like that. I -- I 11:21:10

8 actually think about when -- when a 11:21:14

9 website asks me what they can track or 11:21:17

10 what they're going to put on my computer, 11:21:20

11 I do think about what was, you know, 11:21:24

12 default to hitting okay all the time. 11:21:27

13 So -- so yeah, I think it's -- 11:21:30

14 it's -- you know, that sort of thing, 11:21:33

15 paying attention to what is being 11:21:34

16 represented to me as being shared and 11:21:36

17 thinking about whether or not I want that 11:21:38

18 shared. 11:21:40

19 Q. And do you -- would you agree 11:21:49

20 that you take careful precautions to 11:21:50

21 protect your privacy online? 11:21:53

22 A. I wouldn't use the word 11:21:55

23 "careful" or -- I'm not even sure I would 11:21:56

24 use the word necessarily "precautions." I 11:22:01

25 would say that I am aware of and -- and 11:22:03

1 cognizant of what I am consenting to 11:22:06
2 share, yeah. 11:22:09
3 Q. When you browse the web, are you 11:22:11
4 generally aware that websites display ads? 11:22:32
5 A. Yes, certainly. 11:22:37
6 Q. You've seen those ads, right? 11:22:38
7 A. Yeah. I've definitely seen ads, 11:22:40
8 yeah. 11:22:42
9 Q. Do you ever click on the ads? 11:22:43
10 A. I do. 11:22:45
11 Q. Do you get some value out of 11:22:46
12 clicking out of some ads? 11:22:48
13 A. I do, yeah. 11:22:50
14 Q. What's the value that you get? 11:22:51
15 Tell me about it. 11:22:53
16 A. I -- I enjoy getting new 11:22:55
17 products and services that I maybe hadn't 11:23:02
18 been aware of. I think finding, you know, 11:23:04
19 new brands or new information or new 11:23:08
20 content that -- that appeals to me is 11:23:12
21 nice. 11:23:14
22 Q. What else do you like about 11:23:14
23 seeing those ads? 11:23:16
24 A. I don't know. That -- sometimes 11:23:22
25 the ads are for sales. I like sales. 11:23:25

1 Q. Who doesn't? 11:23:28

2 A. Yeah. 11:23:29

3 Q. And you're also aware that 11:23:44

4 websites also use certain services to 11:23:46

5 display those ads, right? 11:23:47

6 A. I am, yes. 11:23:50

7 Q. In other words, The New York 11:23:51

8 Times -- do you frequent The New York 11:23:53

9 Times? 11:23:56

10 A. I do. I visit The New York 11:23:56

11 Times. I don't know if there's 11:23:58

12 distinctions around the word "frequent," 11:23:59

13 but I definitely visit and go to The New 11:24:01

14 York Times website, yeah. 11:24:05

15 Q. That was an unnecessarily fancy 11:24:05

16 word on my part. We can agree then that 11:24:09

17 you visit The New York Times website 11:24:11

18 online? 11:24:12

19 A. Yes, absolutely. 11:24:13

20 Q. And you see that The New York 11:24:14

21 Times sometimes displays ads to you when 11:24:16

22 you visit, correct? 11:24:18

23 A. I do, yeah. 11:24:19

24 Q. And you understand that those 11:24:20

25 ads may be powered by entities other than 11:24:21

1 (Whereupon, a brief recess is 12:01:16
2 taken.) 12:01:38
3 THE VIDEOGRAPHER: Back on the 12:01:38
4 record. The time is 12:01 p.m. 12:01:52
5 BY MS. TREBICKA: 12:01:52
6 Q. Good morning, Mr. Byatt, again. 12:01:57
7 A. Good morning. 12:02:00
8 Q. Just a quick reminder that you 12:02:01
9 are still under oath; you understand that? 12:02:03
10 A. I do understand that, yes. 12:02:05
11 Q. Earlier, you testified about 12:02:07
12 visiting The New York Times on occasion; 12:02:14
13 do you remember that? 12:02:16
14 A. I do, yes. 12:02:17
15 Q. And you also testified that you 12:02:18
16 reviewed The New York Times's privacy 12:02:20
17 policy; do you remember that? 12:02:23
18 A. Yes. 12:02:24
19 MS. TREBICKA: I will mark as 12:02:25
20 Exhibit 2, The New York Times privacy 12:02:26
21 policy currently available on The New 12:02:35
22 York Times website. 12:02:37
23 (Exhibit 2, The New York Times 12:02:38
24 Privacy Policy, Updated July 1, 2021, 12:02:38
25 marked for identification.) 12:02:39

1 BY MS. TREBICKA: 12:02:39

2 Q. And if you refresh your Exhibit 12:02:39

3 Share, you will see it at some point. 12:02:43

4 Just let me know when you see it. 12:02:44

5 A. I certainly shall. It's not 12:02:46

6 there yet. 12:02:48

7 Q. Okay. 12:02:50

8 A. I -- there is an Exhibit 2 in 12:03:04

9 here. I'm opening it. 12:03:11

10 Q. Okay. 12:03:11

11 A. Okay. I am looking at The New 12:03:12

12 York -- I'm looking at what says that is 12:03:13

13 The New York Times privacy policy, last 12:03:14

14 updated on July 1, 2021. 12:03:16

15 Q. Okay. Do you remember reviewing 12:03:18

16 this policy? 12:03:19

17 A. Not necessarily with 12:03:22

18 specificity. I remember reviewing a 12:03:24

19 document that looks like this. I -- I 12:03:30

20 could not tell you if it was the exact 12:03:33

21 same thing. 12:03:35

22 Q. Understood. If you could scroll 12:03:35

23 down to page 3 of the PDF. 12:03:37

24 A. I think I'm there. Hold on. 12:03:45

25 The page numbers aren't marked. I am on 12:03:47

1 page 3. 12:03:57

2 Q. At the end of page 3, do you see 12:04:07

3 the bolded heading Information Collected 12:04:08

4 Automatically? 12:04:11

5 A. I do. 12:04:13

6 Q. And if you scroll down to 12:04:15

7 page 4, you see the first bullet point 12:04:16

8 there with Tracking Technologies in Your 12:04:21

9 Browsing and Mobile Apps? 12:04:26

10 A. I do see that. 12:04:27

11 Q. Okay. And I will read the words 12:04:28

12 underneath that bolded bullet point into 12:04:30

13 the record. It says "These technologies 12:04:33

14 include cookies, web beacons, tags and 12:04:35

15 scripts, software development kits (or 12:04:39

16 SDKs) and beyond. We track and store data 12:04:41

17 about how you visit and use Times 12:04:45

18 Services, particularly through our 12:04:47

19 websites and apps. The items we log 12:04:50

20 include," and then it has a bulleted list. 12:04:53

21 Do you see that? 12:04:56

22 A. I do. 12:04:57

23 MR. LEE: Viola, before we go 12:04:57

24 on, can I get a standing objection to 12:04:59

25 this line of questioning based on lack 12:05:01

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1 of foundation, please? 12:05:03

2 MS. TREBICKA: Noted, James. 12:05:06

3 MR. LEE: Is that a yes? 12:05:08

4 MS. TREBICKA: Yes, I noted. 12:05:09

5 MR. LEE: Thank you. 12:05:11

6 MS. TREBICKA: It is -- I 12:05:12

7 understand that you have a standing 12:05:12

8 objection. 12:05:14

9 MR. LEE: Great. 12:05:14

10 BY MS. TREBICKA: 12:05:14

11 Q. Do you see the bulleted list of 12:05:17

12 information? 12:05:19

13 A. Yes, I do. 12:05:20

14 Q. And actually, it's a bulleted 12:05:21

15 list of the items that The New York Times 12:05:23

16 says it logs; do you see that? 12:05:25

17 A. I do see that, yes. 12:05:27

18 Q. So of these pieces of data, of 12:05:30

19 items that they log, do you consider any 12:05:34

20 of it to be your personal information? 12:05:36

21 A. Yes, I would say so. 12:05:39

22 Q. Okay. Which ones? 12:05:48

23 A. Well, I -- I would say all of 12:05:53

24 them really. Other usage information, the 12:05:58

25 last one is pretty broad so I don't know 12:06:00

1 what that means, and -- and it seems kind 12:06:03
2 of like a catchall, but, yeah, I -- I 12:06:11
3 would say most of them I -- I could 12:06:14
4 understand as private information -- or 12:06:17
5 personal information, I suppose. 12:06:21

6 Q. Okay. What about sensitive user 12:06:22
7 information? Which ones of these would 12:06:26
8 you consider to be sensitive? 12:06:30

9 A. Well, I don't know what you mean 12:06:36
10 by sensitive, but I would consider all of 12:06:37
11 them to be information that I would be 12:06:41
12 conscientious of sharing and would want to 12:06:43
13 think about and consent positively or 12:06:46
14 withdraw consent from sharing. 12:06:49

15 Q. Do you -- what do you understand 12:06:57
16 the term "sensitive user data" to mean? 12:06:59

17 A. I -- I don't feel like I have a 12:07:06
18 specific understanding of that term. 12:07:07

19 Q. So that's not a term that you 12:07:10
20 would use, right? 12:07:12

21 A. Yeah, I don't think so, yeah. 12:07:14

22 Q. Do you understand it to be 12:07:17
23 different from personal information, 12:07:19
24 though? 12:07:20

25 MR. LEE: Objection to form. 12:07:22

1 A. Yeah, at first blush, not -- not 12:07:23
2 particularly. Maybe. Those are different 12:07:27
3 words so maybe, but I can't say that it's 12:07:31
4 something I've specifically thought about. 12:07:34
5 BY MS. TREBICKA: 12:07:34
6 Q. Under the bullet point "other 12:07:53
7 usage information," it says "We combine 12:07:54
8 this data with other information we 12:07:56
9 collect about you. For more information 12:07:58
10 about tracking methods on Times Services, 12:08:01
11 and how to manage them, read our Cookie 12:08:03
12 Policy." Do you see that? 12:08:06
13 A. I do see it. 12:08:07
14 Q. Have you read The New York 12:08:08
15 Times's cookie policy? 12:08:10
16 A. I could not tell you. 12:08:11
17 Q. Is it okay with you that The New 12:08:17
18 York Times's websites collect this 12:08:20
19 information about you? 12:08:21
20 A. Oh, it's okay with me that they 12:08:24
21 collect it when I consent to it. If -- if 12:08:25
22 I go there and accept it. It would not be 12:08:30
23 okay with me if they told me they weren't 12:08:32
24 going to or if they told me that there was 12:08:35
25 something I could, like, for example, open 12:08:36

1 a specific browser mode and it -- and I 12:08:38
2 thought it was going to stop collecting 12:08:41
3 them. But -- but yeah, I mean, if I go to 12:08:43
4 The New York Times not in Incognito mode, 12:08:46
5 then -- then, yeah, I'm fine with this 12:08:50
6 being collected. 12:08:53

7 Q. Because The New York Times is 12:08:54
8 specifically telling you that it's 12:08:58
9 collecting this information, right? 12:08:59

10 A. And I'm specifically agreeing to 12:09:00
11 it, yes. 12:09:02

12 Q. You're agreeing to it by 12:09:02
13 browsing on The New York Times, correct? 12:09:04

14 A. Well, and also accepting their 12:09:08
15 terms of service and privacy policy. 12:09:09

16 Q. How do you accept The New York 12:09:11
17 Times's privacy policy in terms of 12:09:14
18 service? 12:09:16

19 A. I couldn't say specifically. I 12:09:16
20 believe that I was asked to accept terms 12:09:21
21 of service when I created a New York Times 12:09:26
22 account, but I couldn't say if there are 12:09:29
23 other mechanisms as well that I have 12:09:37
24 reviewed and accepted. 12:09:41

25 Q. You -- if you visit The New York 12:09:43

1 Times in Incognito browsing mode, do you 12:09:47
2 expect The New York Times not to receive 12:09:50
3 this information listed here? 12:09:52

4 A. I expect The New York Times to 12:09:53
5 receive the information, but I expect 12:09:56
6 Google not to because Google told me they 12:09:57
7 were going to not. 12:10:00

8 Q. Let's take that one step at a 12:10:01
9 time. So you accept -- you expected The 12:10:06
10 New York Times to receive this 12:10:08
11 information, even though you were browsing 12:10:10
12 in Incognito, correct? 12:10:12

13 A. That's right. I expect 12:10:14
14 Incognito to control the -- the -- the 12:10:16
15 browser and Google's behavior or Google's, 12:10:18
16 I guess, collection of my data -- of my 12:10:26
17 behavior. 12:10:27

18 Q. If you use Incognito to browse 12:10:27
19 on Google.com, do you still expect Google 12:10:29
20 not to receive your information? 12:10:33

21 A. I don't think that I could say 12:10:37
22 what I -- how I expect Google to -- to use 12:10:38
23 the information. You know, they have told 12:10:44
24 me that they are not going to track my 12:10:46
25 information and -- and I believe them. 12:10:50

1 I'm not sure, you know, how they would 12:10:54
2 necessarily go about doing that, but I 12:10:57
3 imagine that's on them, their 12:11:00
4 representations. 12:11:01

5 Q. I asked about collection and you 12:11:02
6 responded about use. So I'm going to ask 12:11:04
7 the question again just to get a clear 12:11:06
8 record. 12:11:09

9 So if you use Incognito mode on 12:11:09
10 the Chrome browser to go to Google.com, do 12:11:12
11 you expect Google to receive your personal 12:11:16
12 information? 12:11:18

13 A. I would expect Google to know -- 12:11:26
14 if I go to Google.com and search for, I 12:11:35
15 don't know, Joe Biden, I would expect 12:11:42
16 Google to know that someone has searched 12:11:45
17 for Joe Biden, but in -- in Incognito mode 12:11:47
18 if I do this. I would expect them to know 12:11:51
19 that someone has searched for Joe Biden. 12:11:53
20 I would not expect them to collect that it 12:11:58
21 was me, that it was my browser, that it 12:12:01
22 was my computer, that I did this in -- 12:12:02
23 that I did it in various ways. 12:12:04

24 I -- I would not expect them to 12:12:04
25 collect that information. I think I would 12:12:06

1 be in control of what information was 14:39:36
2 collected, told me that the way that I 14:39:39
3 could exercise control was by browsing in 14:39:41
4 Incognito mode. And then while browsing 14:39:44
5 in Incognito mode, they collected the 14:39:47
6 information that they told me I could stop 14:39:49
7 them from collecting, and I think that is 14:39:52
8 a -- yeah, a clear -- like, I asked them 14:39:56
9 not to. Like it's not even -- it's not 14:40:01
10 even a case of not consenting. By opening 14:40:05
11 Incognito, I have explicitly said don't 14:40:11
12 collect the information that you said I 14:40:13
13 could control the collection of by opening 14:40:16
14 Incognito mode. So, yeah, that -- that -- 14:40:18
15 if that information includes IPs, then, 14:40:22
16 yes, collecting that is a violation of 14:40:24
17 that privacy. 14:40:26
18 BY MS. TREBICKA: 14:40:26
19 Q. Do you mean that the word 14:40:37
20 "privately" and "private browsing" means 14:40:41
21 that your Internet browsing activity will 14:40:44
22 be concealed from everyone? 14:40:46
23 A. Well, in the case of Incognito, 14:40:48
24 I'd expect it to be concealed from Google 14:40:49
25 because they told me it was going to be 14:40:52

| | | |
|----|--|----------|
| 1 | concealed from Google. | 14:40:54 |
| 2 | Q. Just from Google, right? That's | 14:40:56 |
| 3 | your understanding? | 14:40:58 |
| 4 | A. So if we look on the Incognito | 14:40:58 |
| 5 | splash screen or what you called the new | 14:41:00 |
| 6 | tab page, it lists a few entities that the | 14:41:04 |
| 7 | activity may still be visible to. I | 14:41:06 |
| 8 | believe that disclosure, I believe that it | 14:41:10 |
| 9 | could be visible to the websites, to my | 14:41:13 |
| 10 | employer or school if I'm on the employer | 14:41:16 |
| 11 | or school network to the Internet service | 14:41:18 |
| 12 | provider, but it doesn't say Google here. | 14:41:21 |
| 13 | It doesn't say my activity might still be | 14:41:24 |
| 14 | visible to Google. So I understood this | 14:41:26 |
| 15 | as -- and that would have been a great | 14:41:29 |
| 16 | place for Google to put Google. So I | 14:41:32 |
| 17 | understood this is my information not | 14:41:36 |
| 18 | being visible to Google. | 14:41:39 |
| 19 | Q. Do you browse privately on other | 14:41:43 |
| 20 | browsers as well, other than Chrome? | 14:41:49 |
| 21 | A. I -- I couldn't say. Yeah, I | 14:41:55 |
| 22 | don't recall with specificity, but maybe. | 14:42:04 |
| 23 | Q. But your testimony here today is | 14:42:15 |
| 24 | that Google should have been included in | 14:42:18 |
| 25 | this new tab page because why? Why would | 14:42:20 |

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1 you have expected it to be included as an 14:42:25
2 entity that the activity might be visible 14:42:27
3 to? 14:42:30

4 A. Well, I didn't expect it to be 14:42:31
5 included. I expected it -- I expected 14:42:32
6 Google to not keep my information. 14:42:34

7 Q. Okay. Let me ask it -- that's 14:42:37
8 fair. 14:42:39

9 MR. LEE: Excuse me, hold on, I 14:42:40
10 don't think you're doing it on 14:42:42
11 purpose, you guys. But you're talking 14:42:43
12 over each other, so let's slow it down 14:42:45
13 a little bit for the reporter, not 14:42:46
14 talk over each other. 14:42:48

15 I don't know if she -- that the 14:42:49
16 reporter caught the last portion of 14:42:51
17 Mr. Byatt's answer. 14:42:53

18 THE COURT REPORTER: Do you want 14:42:55
19 me to read it? 14:42:56

20 MR. LEE: Sure. 14:42:58

21 (Answer read back.) 14:43:12

22 MR. LEE: Was that -- was that 14:43:17
23 the end of your answer? 14:43:17

24 THE WITNESS: I did say 14:43:18
25 something after that, but I don't 14:43:19

1 (Exhibit 9, Document entitled 14:49:44
2 How Private Browsing Works in Chrome, 14:49:44
3 marked for identification.) 14:49:46
4 MR. LEE: I'm perfectly happy 14:49:46
5 for you to call me James. Okay. 14:49:48
6 BY MS. TREBICKA: 14:49:48
7 Q. Can you both see Exhibit 9? 14:49:52
8 MR. LEE: Yes. 14:49:56
9 A. Yes. 14:49:56
10 BY MS. TREBICKA: 14:49:56
11 Q. Mr. Byatt, have you seen this 14:49:58
12 document or something that looks like this 14:49:59
13 document before? 14:50:02
14 A. I don't know. 14:50:03
15 Q. May have, may not have, you just 14:50:05
16 don't know? 14:50:07
17 A. That's correct. 14:50:08
18 Q. Does it look familiar? 14:50:09
19 A. I don't know. 14:50:11
20 Q. Take a minute to read it. 14:50:14
21 A. This one is short. I have read 14:50:18
22 this document. 14:50:19
23 MR. LEE: And let me interpose 14:50:21
24 an objection based on lack of 14:50:23
25 foundation, which I request, I have a 14:50:25

1 standing objection for, for this 14:50:27
2 document. 14:50:28
3 MS. TREBICKA: And, Mr. Lee, 14:50:31
4 just so that I understand, your -- the 14:50:33
5 basis for your lack of foundation 14:50:34
6 objection is? 14:50:35
7 MR. LEE: Is you -- you have not 14:50:37
8 laid the proper predicate that he's 14:50:38
9 reviewed or is familiar with this 14:50:40
10 document, so I'm not sure why you're 14:50:42
11 going to ask him about it. 14:50:44
12 MS. TREBICKA: Your standing 14:50:47
13 objection is noted. 14:50:48
14 MR. LEE: Thank you. 14:50:49
15 BY MS. TREBICKA: 14:50:49
16 Q. So you've reviewed it now, 14:50:56
17 Mr. Byatt? 14:51:00
18 A. I have, yes. 14:51:01
19 Q. Okay. Can you take a look at 14:51:02
20 the first page where it says "Your 14:51:06
21 activity might still be visible"? 14:51:10
22 A. I see that page. 14:51:13
23 Q. And it says -- and I'll just 14:51:15
24 read it into the record and you'll make 14:51:17
25 sure to go slow. "Incognito mode stops 14:51:19

1 Chrome from saving your browsing activity 14:51:21
2 to your local history. Your activity, 14:51:24
3 like your location, might still be visible 14:51:27
4 to" and then it has a bunch of bullet 14:51:30
5 points. And the first one is "websites 14:51:32
6 you visit, including the ads and resources 14:51:35
7 used on those sites"; do you see that? 14:51:39

8 A. I do see that. 14:51:41

9 Q. And earlier today during this 14:51:43
10 deposition, we established that ads and 14:51:46
11 resources used on those sites could mean 14:51:50
12 Google ads and resources, including Google 14:51:53
13 Analytics, right? 14:51:57

14 A. I'm not sure if we have 14:52:01
15 established that. I -- that feels like 14:52:05
16 courtroom words. I don't -- I'm 14:52:09
17 uncomfortable saying yes to that, but I 14:52:12
18 understand what you are saying right now. 14:52:15

19 Q. So your testimony is that you 14:52:17
20 didn't agree earlier today that websites 14:52:18
21 could use Google Analytics, for example, 14:52:21
22 as a service? 14:52:24

23 A. I -- I think that and what you 14:52:26
24 just said might be two different things. 14:52:28
25 If I'm misunderstanding, that's fine, but 14:52:29

1 I do agree that websites use Google 14:52:32
2 Analytics as a service. 14:52:36
3 Q. Do you understand that websites 14:52:36
4 also sometimes use Google ads as a 14:52:38
5 service? 14:52:40
6 A. Yes. 14:52:42
7 Q. And here, it says that your 14:52:42
8 activity in Incognito may be visible to 14:52:44
9 the websites you visit, including the ads 14:52:47
10 and resources used on those sites; is that 14:52:50
11 correct? 14:52:53
12 A. I see that it says this here, 14:52:54
13 but I'm not sure that I have seen this 14:52:55
14 document before, and what I am sure that I 14:52:57
15 have seen is the Incognito splash screen 14:52:58
16 that tells me that I can browse privately 14:53:00
17 and I am sure that I have seen the privacy 14:53:02
18 policy that says that Incognito mode is 14:53:05
19 how I can control what information is 14:53:07
20 given to Google. 14:53:10
21 MS. TREBICKA: Move to strike as 14:53:12
22 nonresponsive. 14:53:14
23 BY MS. TREBICKA: 14:53:14
24 Q. My question is: This document 14:53:15
25 here that I am showing you says that your 14:53:18

1 activity in Incognito may be visible to 14:53:25
2 the websites you visit, including the ads 14:53:29
3 and resources used on those sites, right? 14:53:31
4 A. Yes, I agree that this document 14:53:34
5 says that. 14:53:36
6 Q. So had you read this document, 14:53:37
7 you would have known that your activity in 14:53:38
8 Incognito may be visible to the websites 14:53:42
9 you visit, including the ads and resources 14:53:44
10 used on those sites, correct? 14:53:47
11 MR. LEE: Objection to form. 14:53:49
12 Calls for speculation. 14:53:51
13 A. Yeah. So I guess if I had read 14:53:55
14 it, I would have understood that it might 14:53:56
15 still be visible to websites I visit, 14:53:59
16 including the ads and resources. It does 14:54:03
17 not say here, that I see, that that 14:54:06
18 definitely includes Google ads, Google 14:54:11
19 Analytics. 14:54:19
20 It does not see -- say that this 14:54:19
21 overrides the -- the privacy policy or the 14:54:23
22 splash screen. But, yeah, I see that it 14:54:27
23 says might. I see that some of these 14:54:31
24 might be visible to our ads and resources, 14:54:33
25 I do see that. 14:54:38

1 MR. LEE: Viola, we've been 14:54:42
2 going for over an hour. I'd like to 14:54:43
3 take a break in the next few. 14:54:47
4 MS. TREBICKA: Okay. I 14:54:49
5 understand. Just give me a second to 14:54:50
6 see if I can finish this up and then 14:54:52
7 we can -- 14:54:54
8 MR. LEE: Sure. 14:54:54
9 MS. TREBICKA: Yeah. 14:54:55
10 A. I can give a little bit of 14:55:23
11 clarity into that last answer too if 14:55:25
12 that's helpful. 14:55:26
13 BY MS. TREBICKA: 14:55:27
14 Q. We'll move on with my 14:55:27
15 questioning. Thank you. 14:55:28
16 So I'd like -- 14:55:30
17 MS. TREBICKA: Actually, James, 14:55:32
18 I would like to move on to a new 14:55:34
19 document. Would you rather take a 14:55:36
20 break now or have me move on? 14:55:37
21 MR. LEE: Yeah, let's take a 14:55:39
22 break now. 14:55:40
23 MS. TREBICKA: Okay. 14:55:40
24 MR. LEE: I generally want to 14:55:41
25 keep it, for everyone's sake, about an 14:55:42

1 Q. Uh-huh. 15:07:34

2 A. I'm not a hundred percent sure. 15:07:49

3 This one -- some of the stuff in here 15:07:53

4 looks familiar, but I don't remember this 15:07:55

5 one specifically. 15:07:58

6 Q. You can set it aside. 15:08:01

7 MR. LEE: Are we done with that 15:08:08

8 one because I have it open. 15:08:10

9 MS. TREBICKA: Yeah, you can set 15:08:14

10 it aside. 15:08:16

11 MR. LEE: Okay. 15:08:16

12 BY MS. TREBICKA: 15:08:16

13 Q. Mr. Byatt, earlier you testified 15:08:29

14 that you understand you have a contract 15:08:31

15 with Google. Do you remember that? 15:08:33

16 A. I do, yes. 15:08:34

17 Q. And under that contract, did you 15:08:35

18 make any promises to Google? 15:08:39

19 A. To use their software would be 15:08:42

20 sort of the biggest one, for them to be 15:08:44

21 able to use my, you know, sort of browsing 15:08:49

22 behavioral data, but I -- I would say the 15:08:52

23 big one that I understand is to use their 15:08:54

24 software, Chrome in particular. 15:08:57

25 Q. When you say for them to be able 15:08:59

1 to use my sort of behavioral data, what do 15:09:03
2 you mean by that? 15:09:06
3 A. I mean for Google to have access 15:09:09
4 to my data, basically all of the things 15:09:15
5 that I asked them to not collect 15:09:19
6 temporarily when I am in Incognito mode. 15:09:21
7 MR. LEE: You know what, Belle, 15:09:31
8 can you just read the answer back for 15:09:33
9 me? 15:09:35
10 (Answer read back.) 15:09:36
11 BY MS. TREBICKA: 15:09:36
12 Q. And what are those things? 15:09:54
13 A. I -- I don't have an exhaustive 15:09:58
14 list, but one list would be that -- that 15:09:59
15 we were looking at from the privacy 15:10:02
16 policy. 15:10:06
17 Q. Are you referring to the bullet 15:10:06
18 pointed list that I asked you about in the 15:10:12
19 privacy policy? 15:10:15
20 A. I believe there was a bullet 15:10:17
21 pointed list and then I think there was 15:10:19
22 also a list of data that might have been 15:10:21
23 in paragraph form. I don't remember 15:10:23
24 exactly, but I am referring to lists that 15:10:25
25 we've gotten on the record here, yes. 15:10:29

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1 Q. For the record to be clear, why 15:10:37
2 don't we go back to Exhibit 7? 15:10:39
3 A. I am in Exhibit 7. 15:10:56
4 Q. Okay. If you could scroll to 15:10:58
5 page 2. 15:11:00
6 A. I'm there. 15:11:05
7 Q. And it's the second paragraph 15:11:05
8 from the bottom that's the one that starts 15:11:08
9 with the "information we collect"? 15:11:11
10 A. Yes. So I would mean, at 15:11:13
11 minimum, that information listed there 15:11:18
12 starting with "the information we 15:11:19
13 collect," ending with "refer URL of your 15:11:21
14 request," I also think, yeah, the next 15:11:24
15 page under "Your activity," it also has 15:11:28
16 some activity that I think I might have 15:11:31
17 included with that as information that I'm 15:11:36
18 agreeing to give Google when I sign those 15:11:41
19 contracts or agree to those contracts, I 15:11:45
20 guess. 15:11:47
21 Q. Have you ever tried to sell the 15:11:50
22 personal information that's the subject of 15:11:53
23 this lawsuit? 15:11:55
24 A. Have I tried to sell it? No, I 15:11:57
25 have not. 15:12:00

1 Q. Do you have a sense of how much 15:12:01
2 your personal information is worth if you 15:12:04
3 were to try to sell it? 15:12:06

4 MR. LEE: Do you mean this 15:12:09
5 Incognito personal -- Incognito data 15:12:10
6 or generally? 15:12:12

7 MS. TREBICKA: Well, why don't 15:12:14
8 we take it in steps then. 15:12:15

9 BY MS. TREBICKA: 15:12:15

10 Q. Mr. Byatt, do you have a 15:12:17
11 sense -- well, first off, have you ever 15:12:19
12 tried to sell any of your personal 15:12:21
13 information related to your browsing? 15:12:23

14 A. Not that I recall. 15:12:31

15 Q. So as far as your -- the 15:12:33
16 browsing information when you are not in 15:12:38
17 Incognito mode, do you have a sense for 15:12:42
18 how much that is worth? 15:12:43

19 A. I would imagine the market cap 15:12:46
20 of Google divided by its user base. 15:12:47

21 Q. Because you understand that all 15:12:51
22 of Google's market cap is as a result of 15:12:53
23 the use of this information? 15:12:59

24 A. Probably not all of it, but I do 15:13:04
25 understand that Google pours lots of money 15:13:07

1 and resources into collecting that 15:13:13
2 information and monetizing that 15:13:15
3 information. I'm not sure what the 15:13:17
4 specific dollar value of my information 15:13:19
5 is, but I certainly understand that it's 15:13:22
6 worth quite a bit to Google. 15:13:24

7 Q. And how do you understand that 15:13:27
8 Google's poor -- that Google collects 15:13:30
9 information and monetizes information? 15:13:34

10 A. I'm sorry, could you -- could 15:13:44
11 you clarify? 15:13:46

12 Q. How -- you want me to clarify. 15:13:47
13 I'll re-ask. 15:13:51

14 A. Yes, go ahead. 15:13:52

15 Q. How do you know that Google 15:13:54
16 collects information and monetizes that 15:13:55
17 information? 15:13:58

18 A. It's common knowledge, I think. 15:14:03
19 I don't know how to say that more 15:14:08
20 specifically, but I think everyone knows 15:14:09
21 that that's Google's business model. 15:14:11

22 Q. Has Google's conduct, as you 15:14:16
23 understand it, affected your ability to 15:14:18
24 monetize yourself, your personal 15:14:23
25 information? 15:14:27

1 MR. LEE: Again, are we still 15:14:28
2 talking about non-Incognito 15:14:29
3 information? 15:14:31
4 MS. TREBICKA: Yes. 15:14:31
5 A. I don't know because I haven't 15:14:40
6 sort of explored that market to see how my 15:14:43
7 data is priced or how Google having that 15:14:47
8 information would have affected the price. 15:14:51
9 So I -- I don't know. 15:14:56
10 BY MS. TREBICKA: 15:14:56
11 Q. And has Google's conduct that's 15:14:59
12 the subject of this lawsuit affected your 15:15:01
13 ability to use this information in any 15:15:03
14 way? 15:15:09
15 A. Well, one way that I would like 15:15:12
16 to sort of use the information is to 15:15:14
17 control how it's shared. By 15:15:16
18 misrepresenting how my information is 15:15:22
19 shared, that is impacting my ability to 15:15:23
20 make, you know, accurate and informed 15:15:26
21 decisions about the use of my data. So, 15:15:27
22 yes. 15:15:29
23 Q. Any other way? 15:15:31
24 A. Maybe. I -- I'm wary to rule 15:15:33
25 anything out specifically, but that is 15:15:36

1 A. Give me just a moment, please. 16:15:11
2 Yeah, I do. 16:15:13
3 Q. And what is this document? 16:15:14
4 A. Same thing as the others. It is 16:15:17
5 my responses to some questions from 16:15:19
6 Google. 16:15:24
7 Q. Okay. 16:15:25
8 MS. TREBICKA: And same note as 16:15:30
9 to this amended response and 16:15:33
10 objection, we have not yet received 16:15:37
11 Mr. Byatt's verification. We trust it 16:15:39
12 will come shortly. 16:15:43
13 BY MS. TREBICKA: 16:15:45
14 Q. But, Mr. Byatt, did you review 16:15:45
15 to make sure that it is -- the responses, 16:15:46
16 that they are, to the best of your 16:15:49
17 understanding and belief? 16:15:52
18 A. When I got this document, I did 16:15:54
19 do that. Let me -- give me just a moment 16:15:58
20 to check and make sure that this is what I 16:16:02
21 remember reviewing. 16:16:04
22 Yeah, this looks right, as best 16:16:29
23 as I can remember. 16:16:33
24 Q. You're aware of companies like 16:16:36
25 Killi or Brave; is that right? 16:16:40

| | | |
|----|--|----------|
| 1 | A. Yes. | 16:16:44 |
| 2 | I don't know if you got my | 16:16:58 |
| 3 | answer, but I said, yes, I'm aware of | 16:16:59 |
| 4 | these. | 16:17:02 |
| 5 | Q. What is Killi? | 16:17:02 |
| 6 | MS. TREBICKA: It's -- for the | 16:17:03 |
| 7 | record, it's K-I-L-L-I. | 16:17:04 |
| 8 | A. I know that Killi is in the | 16:17:06 |
| 9 | space of allowing people to monetize some | 16:17:15 |
| 10 | of their private information. I can't | 16:17:20 |
| 11 | remember exactly what their business model | 16:17:23 |
| 12 | is right now. I know that that whole | 16:17:28 |
| 13 | space is shifting pretty rapidly. | 16:17:30 |
| 14 | BY MS. TREBICKA: | 16:17:30 |
| 15 | Q. And you've never attempted to | 16:17:33 |
| 16 | monetize your personal information on | 16:17:35 |
| 17 | Killi? | 16:17:37 |
| 18 | A. I have not attempted to, no. | 16:17:38 |
| 19 | Q. What is Brave? | 16:17:39 |
| 20 | A. Brave is a web browser that has | 16:17:42 |
| 21 | built-in sort of privacy features and also | 16:17:47 |
| 22 | allows you to sell -- I think they allow | 16:17:51 |
| 23 | you to sell your attention. Basically | 16:17:54 |
| 24 | they'll -- they'll serve you ads and pay | 16:17:58 |
| 25 | you to look at those ads, I believe, but | 16:18:00 |

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| | | |
|----|--|----------|
| 1 | it's a web browser. | 16:18:05 |
| 2 | Q. Have you ever used Brave? | 16:18:09 |
| 3 | A. I have used Brave, yes. | 16:18:10 |
| 4 | Q. Have you gotten paid for using | 16:18:12 |
| 5 | Brave? | 16:18:14 |
| 6 | A. I have not. | 16:18:15 |
| 7 | Q. Earlier we talked about browsing | 16:18:16 |
| 8 | on Incognito in Chrome. Do you recall | 16:18:23 |
| 9 | that? We talked about it a lot -- | 16:18:27 |
| 10 | A. Yes. | 16:18:30 |
| 11 | Q. -- frankly, I just always feel | 16:18:30 |
| 12 | the need to preface this with what we've | 16:18:32 |
| 13 | talked about. | 16:18:34 |
| 14 | A. Yes, I do remember that. | 16:18:36 |
| 15 | Q. Okay. And also from some of | 16:18:38 |
| 16 | your interrogatory responses, we know that | 16:18:39 |
| 17 | you used Incognito to browse | 16:18:42 |
| 18 | adult-oriented websites including | 16:18:46 |
| 19 | websites -- or adult-oriented websites and | 16:18:50 |
| 20 | websites like The New York Times, for | 16:18:54 |
| 21 | example; is that correct? | 16:18:55 |
| 22 | A. That's correct, yes. | 16:18:57 |
| 23 | Q. What are adult-oriented | 16:18:58 |
| 24 | websites? | 16:19:00 |
| 25 | A. Pornography websites. | 16:19:04 |

1 Q. Do you only browse pornography 16:19:07
2 websites while on Incognito? 16:19:10
3 A. I hope so. 16:19:12
4 Q. Do you believe that your data is 16:19:15
5 more valuable when it's related to 16:19:18
6 browsing on the pornography websites 16:19:23
7 rather than The New York Times? 16:19:27
8 MR. LEE: Objection to form. 16:19:30
9 A. I have no knowledge of 16:19:32
10 specifically how that's priced or what 16:19:35
11 information is particularly valuable. 16:19:37
12 BY MS. TREBICKA: 16:19:37
13 Q. What about Incognito versus 16:19:40
14 non-Incognito, do you believe that data 16:19:42
15 related to your browsing when you are in 16:19:44
16 Incognito is more valuable than data 16:19:46
17 related to your browsing when you are not 16:19:49
18 in Incognito? 16:19:51
19 MR. LEE: Objection, valuable to 16:19:53
20 who? 16:19:54
21 A. Yeah, so again, I don't know 16:19:59
22 from Google's perspective how that 16:20:01
23 information is priced. I don't know what 16:20:05
24 that looks like. I can tell you that from 16:20:09
25 my perspective, basically by definition, 16:20:14

CERTIFICATION

I, BELLE VIVIENNE, a Nationally
Certified Realtime Reporter, do hereby
certify:

That the witness whose testimony as
herein set forth, was duly sworn by me;
and that the within transcript is a true
record of the testimony given by said
witness.

I further certify that I am not
related to any of the parties to this
action by blood or marriage, and that I am
in no way interested in the outcome of
this matter.

IN WITNESS WHEREOF, I have hereunto
set my hand this 23rd day of December
2021.

Belle Vivienne

BELLE VIVIENNE, CRR, CCR, RPR

* * *

EXHIBIT 48

NY Times Privacy Policy (Byatt Ex. 2)

Privacy Policy



The New York Times Company Privacy Policy

Last Updated on July 01, 2021

At The Times, our mission is to seek the truth and help people understand the world. We want you to understand how we handle your data. We also want you to know your rights and choices.

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2. [What Do We Do With The Information We Collect About You?](#)
3. [With Whom Do We Share the Information We Gather?](#)

This policy describes how we handle your data when you use "Times Services," listed below:

- The New York Times newspaper, plus our International Edition
- Our websites, like *nytimes.com*
- Our apps, like the *New York Times app* and the *New York Times Crossword app*

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William Byatt - V1

- Our email newsletters, *like Cooking and Morning Briefing*

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- Our pages or ads on social media networks, *like our Facebook and Instagram pages*
- Anywhere we gather information from you and refer you to this Privacy Policy

How we handle information about you depends on which Times Services you use — and how you use them. We use different information about print subscribers than website visitors.

Be aware that certain Times Services work differently. Some have additional terms that supplement this policy (e.g., [Reader Submissions](#)). Others refer to a different privacy policy altogether, so this one does not apply.

1. What Information Do We Gather About You?

The information we gather about you depends on the context. By and large, it's information about you that can personally identify you — either on its own or when combined with other information.

The following describes the information we collect and how we obtain it.

A) Information Collected Through Times Services.

i. Information You Voluntarily Give Us

• For Registration:

When you sign up for a Times Service (e.g., *a subscription*), we collect your contact information and account credentials. Once you're registered, we assign you a unique ID number. This ID number helps us recognize you when you're signed in.

For some Times Services, you can instead sign up by linking your Apple, Facebook or Google account. See ["From Other Sources"](#) below.

If you register for an event or conference, we might ask for additional information (e.g., *your company name, your job title or your dietary restrictions*).

• For Billing:

To process payments or donations, we collect and use your payment information.

This can include your name, your address, your telephone number, your email address, your credit or debit card information and any other relevant information.

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- **For User-Generated Content:**

We offer you the ability to post content that other users can read (e.g., *comments or recipe reviews*). Anyone can read, collect and use any personal information that accompanies your posts. See the [Comments F.A.Q.](#), or read "[User-Generated Content](#)" in our Terms of Service for more information.

We do not have to publish any of your content. If the law requires us to take down, remove or edit your personal information, we will comply to the required extent.

- **For Contests, Sweepstakes and Special Offers:**

When you sign up for these, you give us your name, email and any other required information.

- **For Reader Surveys, Research, Panels and Experience Programs:**

We gather information through questionnaires, surveys and feedback programs. We also conduct similar research for advertisers. We ask you for your consent to use this information when you participate in these programs and events.

- **During Contact With Our Call Centers:**

We collect information from you when you place an order over the phone or contact customer service through one of our toll-free numbers.

- **Personal Contacts Data:**

We never scan your device for your contacts or upload that data.

With your consent, we do comply with your requests to collect data about your friends, family or acquaintances (e.g., *Refer a Friend campaigns*). This functionality is only meant for U.S. residents. By using it, you acknowledge and agree that both you and your contacts are based in the United States — and that you have everyone's consent for us to use their contact information.

- ii. **Information Collected Automatically**

ii. Information Collected Automatically

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- **With Tracking Technologies in Your Browser and Mobile Apps:**

These technologies include cookies, web beacons, tags and scripts, software development kits (or SDKs) and beyond.

We track and store data about how you visit and use Times Services, particularly through our websites and apps. The items we log include:

- Your IP address
- Your location
- Your operating system
- Your browser
- Your browser language
- The URLs of any pages you visit on our sites and apps
- Device identifiers
- Advertising identifiers
- Other usage information.

We combine this data with other information we collect about you. For more information about tracking methods on Times Services, and how to manage them, read our [Cookie Policy](#).

If your browser doesn't accept our cookies, you can't access certain parts of our websites (e.g., *your account on nytimes.com*). Because the "Do Not Track" browser-based standard signal has yet to gain widespread acceptance, we don't currently respond to those signals. We however respond to the [Global Privacy Control](#) in certain territories, such as Europe and California.

- **With GPS Technologies:**

Some of our apps can provide content based on your GPS location, if you enable this feature (e.g., *the New York Times Real Estate app*). Your GPS location is your exact location.

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You choose whether to enable GPS features when you first install the app. You can edit that setting on your device at any time. If you enable these features, your GPS location can be found by satellite, cell phone tower or Wi-Fi and used by the app. If you save a location-based search in your history, that data moves to our service provider's servers — [see below](#) for the definition of service provider.

If you do not enable GPS location-based services, or if a specific app does not have location-based features (e.g., *the New York Times app*), we don't collect your precise GPS location. We do collect your IP address, which can establish your approximate location. Ads on our sites and apps may be targeted based on this approximate location, but are never targeted based on your GPS location.

B) Information Collected From Other Sources.

i. Privately Owned Databases:

Marketing, data analytic and social media-owned databases give us access to a range of information — like public data, survey data and beyond. This data sometimes includes your mailing address, your gender, your age, your household income and other demographic data.

ii. Social Media Platforms and Other Third-Party Services:

(Social media platforms include Facebook. Third-party services include Google and Nook.)

You can link your social media or other third-party account to a Times Service. By linking the services, you authorize us to collect, store and use any information they may give us (e.g., *your email address*). You can disconnect your nytimes.com registration from third-party accounts at any time.

We also receive information from you when you interact with our pages, groups, accounts or posts on social media platforms. This includes aggregate data on our followers (e.g., *age, gender and location*), engagement data (e.g., *"likes," comments, shares, reposts and clicks*), awareness data (e.g., *number of impressions and reach*) and individual users' public profiles.

For more information, refer to our [social login](#) and [Nook F.A.Q.](#)

iii. Workplace and Schools:

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iii. Workplace and Schools:

When your employer or school buys an organizationwide subscription to nytimes.com, they sometimes provide us with your name and organization email address to grant you access as a user.

A note about future updates:

We are always improving our products and services, and we create new features regularly. These updates sometimes require us to collect new information, or use what we already have differently. If there is a significant or material change in the way we handle your personal information, we will notify you as detailed below.

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2. What Do We Do With The Information We Collect About You?

A) We provide the Times Services.

We use your information to help you use and navigate Times Services, such as:

- Making a Times Service available to you
- Arranging access to your account
- Providing customer service
- Responding to your inquiries, requests, suggestions or complaints
- Completing your payments and transactions
- Sending service-related messages (e.g., a change in our terms and conditions)
- Saving your reading list, recipes or property searches
- Displaying your Crossword stats
- Letting you take part in paid services, polls, promotions, surveys, panels, research and comments.

B) We Personalize Your Experience.

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We track your interests and reading habits (e.g., *the articles you read*) to personalize your reading experience using technology like algorithmic recommendations and machine learning. This is how we highlight articles you might be interested in and de-emphasize articles you've already read. For more information about content personalization on Times Services, you can read the [Personalization F.A.Q.](#) We also show you prices, promotions, products or services we believe you'll find interesting, based on demographic and usage data.

C) We Allow You to Share User-Generated Content.

Any information you disclose in your content becomes public — along with your chosen screen name and uploaded photo.

D) We Develop Products and Services, and Do Analysis.

We analyze data on our users' subscription, purchase and usage behaviors. This helps us make business and marketing decisions.

For example, our analysis lets us predict preferences and price points for our products and services. It helps us determine whether our marketing is successful. It also shows us characteristics about our readers, which we sometimes share in aggregate with advertisers.

Google Analytics is one of the analytics providers we use. You can find out [how Google Analytics uses data](#) and [how to opt out of Google Analytics](#).

E) We Carry Out Administrative Tasks.

- For auditing: We verify that our internal processes work as intended and comply with legal, regulatory and contractual requirements.
- For fraud and security monitoring: We detect and prevent cyberattacks or unauthorized robot activities.
- For customer satisfaction: We assess users' satisfaction with Times Services and our customer care team.

The above activities can involve outside companies, agents or contractors ("service providers") with whom we share your personal information for these purposes (discussed further below).

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The above activities can involve outside companies, agents or contractors ("service providers") with whom we share your personal information for these purposes (discussed further below).

F) We Offer Sweepstakes, Contests and Other Promotions.

You can take part in our sweepstakes, contests and other promotions. Some might have additional rules about how we use and disclose your personal information.

G) We Allow for Personalized Advertising on Times Services and Create Audiences for Third-Party Advertisers.

We gather data and work with [third parties](#) to show you personalized ads on behalf of advertisers. This data comes from ad tracking technologies set by us or the third party (e.g., cookies), the information you provide (e.g., your email address), your use of Times Services (e.g., your reading history), information from advertisers or advertising vendors (e.g., demographic data) and anything inferred from any of this information. We only use or share this information in a manner that does not reveal your identity. For example, we use Google to serve ads on Times Services. Google uses cookies or unique device identifiers, in combination with their own data, to show you ads based on you visiting nytimes.com and other sites. You can opt out of the use of the Google cookie by visiting the [related Google privacy policy](#).

We also identify groups of users to whom to serve personalized ads on behalf of our advertisers. To do this, we combine information we collect through surveys or registration with information we collect automatically using tracking technologies while you browse our sites and apps. This combined information is used to build models. These data models are then used to measure users' attributes, like their demographic information or their interests. Working with service providers, we use these measurements to group users by common attributes. Each group is associated with a random ID which is then passed to our ad server for use in targeting ad campaigns on our sites and apps.

Another example is our affiliate link vendors, which we use in our guides and product recommendations. Times Services include links that will send you to vendor URLs and other services not operated or controlled by us. These vendors use cookies and other technologies to collect information about your navigation from the Times Services to the merchant you are visiting. If you buy a product after following a link to a link vendor's URL, we may earn a commission.

Additional notes:

vendor's URL, we may earn a commission.

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Additional notes:

- For more about targeted advertising, and how to opt out with your specific browser and device, go to the [DAA Webchoices Browser Check](#) and [NAI Opt Out of Interest-Based Advertising](#). You can [download the AppChoices app](#) to opt out in mobile apps. You can also follow the instructions in the [What Are Your Rights?](#) section below.

- We try to limit how our third-party advertising technology vendors use the information they gather from you. Many of these providers require us to enter into contracts that allow them to optimize their own services and products, or that help them create their own.

Essentially, these providers combine any information they gather about you through Times Services with information they receive from their other clients. This helps them target ads to you on behalf of their other clients, not just us.

- These third parties sometimes use other services in order to serve ads; check [their privacy policies for more details](#). For further information on tracking technologies and your rights and choices regarding them, see the applicable [Cookie Policy](#).

H) We Advertise Times Services to You.

We market our properties to you. Sometimes we use marketing vendors to do this.

We serve ads through websites, locations, platforms and services operated and owned by third parties. Often these ads are targeted at people who have visited or registered for a Times Service but have not subscribed or purchased anything. The ads are also targeted at people with similar traits or behaviors to our subscribers or customers.

We target our advertising to these users by uploading an encrypted customer list to a third party, or by incorporating a tracking technology from a third party onto our Times Service. The third party then matches individuals who appear in both our data and their data. Because of how this matching process works, the third party can't read our encrypted customer list if they don't already have it.

To opt out of receiving these matched ads, contact the applicable [third parties](#). For example, when we use "Custom Audience" to serve you our ad through Facebook, you should be able to hover over the box in the right corner of that Facebook ad and opt out. We are not responsible for any third party's failure to comply with opt-out requests.

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We periodically send you targeted email newsletters or promotional emails. For information on opting out of these emails, see [What Are Your Rights?](#)

I) We Aggregate (or De-identify) Personal Information Into Larger Findings.

Sometimes we aggregate or de-identify information so that it can no longer identify you, under applicable laws. This helps us better understand and represent our users, such as when we measure ad performance, create advertising interest-based segments or compile survey results. We can use and disclose this aggregated or de-identified information for any purpose, unless an applicable law says otherwise.

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3. With Whom Do We Share the Information We Gather?

A) Within The New York Times Company:

We share your information with our affiliates for the purposes listed here. See [a list of our affiliates](#).

B) With Service Providers:

We work with service providers, as defined above, to carry out certain tasks:

- Processing your payments
- Fulfilling your orders
- Maintaining technology and related infrastructure
- Offering you customer service
- Serving and targeting ads
- Measuring ad performance
- Presenting surveys
- Shipping you products and mailings

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- Distributing emails
- List processing and analytics
- Managing and analyzing research
- Managing promotions

When performing these tasks, service providers often have access to your personal information.

We sometimes allow them to use aggregated or de-identified information for other purposes, in accordance with applicable laws

C) With Other Third Parties:

There are situations when we share your information with third parties beyond our service providers. We never share your email address with these third parties without your consent, except in encrypted form to engage in the matched ads process described [above](#).

- i. If you're a U.S. print subscriber, we may share your name and mailing address (among other information) with other reputable companies that want to market to you by mail.
- ii. We share information about our live event and conference attendees (e.g., *your name, your company or your job title*) with the event sponsors. In those cases we notify you when you provide us the information.
- iii. We share information about participants in our sweepstakes, contests and similar promotions with the promotions' sponsors. In those cases we notify you when you provide us the information.
- iv. We process payments you make through Times Services with external services.

There are two ways this can happen:

- We collect your information and share it with the third-party service for processing.
- The third-party service collects your information for processing.

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v. In the event of a reorganization, merger, sale, joint venture, assignment, transfer or other disposition of all or any portion of our business, assets or stock (including in connection with any bankruptcy or similar proceedings), we would have a legitimate interest in disclosing or transferring your information to a third party — such as an acquiring entity and its advisers.

vi. We can preserve or share personal information if the law requires us to do so. We can also preserve or share personal information if we believe it would be necessary to:

- Comply with the law or with legal process
- Protect and defend our rights and property
- Protect against misuse or unauthorized use of the Times Services
- Protect the safety or property of our users or the general public (*e.g., if you provide false information or attempt to pose as someone else, we could share your information to help investigations into your actions*)
- Cooperate with government authorities, which could be outside your country of residence.

vii. We disclose public activities in our RSS feeds, APIs and other distribution formats. Your public activities could thus appear on other websites, blogs or feeds.

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4. What Are Your Rights?

A) How Do I Opt Out of Email, Phone, Mail and Push Notifications?

The opt-out methods described below are limited to the email address, phone or device used. They won't affect subsequent subscriptions.

i. Email:

We offer a variety of commercial emails and email newsletters. You can unsubscribe from them by following the "unsubscribe" instructions near the bottom of the email. You can also email us at privacy@nytimes.com.

You can [manage your nytimes.com newsletter preferences](#).

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ii. Mail or Telephone Promotions:

You can ask us to unsubscribe from our mail or telephone solicitations. You can also ask us to not share your information with third parties for marketing purposes. To do so, call us at 1-800-698-4637 or [chat with us](#). You may also email us at privacy@nytimes.com with "Opt Out" in the subject line, and your account number and phone number in the body of the email.

For International Edition customers, you can write us at: *The New York Times International Edition, Subscription Dept. 18 Museum Street, London, WC1A 1JN, United Kingdom*. Please include your account number and phone number in the body of the letter.

iii. Push Notifications:

You can opt out any time by adjusting your device settings, or uninstalling our app.

iv. Text Messages:

You can opt out of text alerts any time by replying "STOP," or any alternative keyword we've shared with you.

We complete any opt-out request as quickly as we can. This opt-out request won't prohibit us from sending you important nonmarketing notices.

B) How Do You Access, Change, Delete, Update or Exercise Your Other Rights in Relation to Your Personal Information?

In some parts of the world, you have the right to:

- Access, modify, or delete the personal information we have about you
- Receive an electronic copy of the personal information we have about you, for data portability
- Restrict, or object to, how we process personal information about you
- Not receive discriminatory treatment by us for the exercise of your privacy rights.

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You have the right to object to the processing of your personal information based on our legitimate interest or that of a third party — unless we demonstrate compelling legitimate grounds for the processing of, or the keeping of, your personal information for the establishment, exercise or defense of legal claims.

If you'd like to exercise any of the above rights, contact us via [this form](#) or by calling us at our toll-free number, 1-800-NYTIMES. In your request, please be specific. State the information you want changed, whether you'd like your information suppressed from our database or whether there are limitations you'd like us to put on how we use your personal information. Please use the email address linked to that personal information — we only complete requests on the information linked to your email address. To verify your identity, we will email the email address you provide us, and which matches our records, and wait for your response. In some instances we may also ask for additional information. This is how we verify your identity before complying.

You can designate an authorized agent to make a request on your behalf. In order to do that, please provide the agent with written permission, signed by you, authorizing the agent to submit the request on your behalf. The agent must submit that written permission along with the request. We will contact you to verify your identity — and the authorized agent's permission — before a response to the request is sent.

We'll respond to your request in a manner consistent with applicable law.

We might need to keep certain information for recordkeeping purposes, or to complete a transaction you began prior to requesting a change or deletion (*e.g., if you make a purchase or enter a promotion, you might not be able to change or delete the personal information provided until after the completion of the purchase or promotion*).

In some cases, your request doesn't ensure complete removal of the content or information (*e.g., if another user has reposted your content*).

If you'd like, you can lodge a complaint with a data protection authority. A [list of E.U. data protection authorities](#) is available.

C) How Do You Manage Your Digital and Home Delivery Accounts?

You can update your account information and see [your transaction history](#) (for [International Edition print subscribers](#)). If you need assistance, call our toll-free number, 1-800-NYTIMES. [Other local numbers](#) are available.

It works differently if you subscribed via Apple's App Store or Google Play. Register with us to access the Account area, and contact Apple or Google for your transaction history.

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12. [How Are Changes to This Privacy Policy Communicated?](#)
13. [How Can You Contact Us? Who Is the Controller of Your Personal Information?](#)

5. What About Sensitive Personal Information?

We generally don't want to gather any sensitive information about you. This includes:

- Your social security number
- Your racial or ethnic origin
- Your political opinions
- Your religion or other beliefs
- Your health, biometric or genetic characteristics
- Any trade union membership
- Any criminal background

There are rare situations when we request this information (*e.g., a reader survey asks about your political leanings*), but you can decline to answer. Outside those situations we would prefer you never share that information with us.

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6. How Long Do You Retain Data?

It depends. We store your personal information for as long as needed, or permitted, based on the reason why we obtained it (consistent with applicable law). This means we might retain your personal information even after you close your account with us.

When deciding how long to keep your information, we consider:

- How long we have had a relationship with you or provided a Times Service to you
- Whether we are subject to any legal obligations (*e.g., any laws that require us to keep transaction records for a certain period of time before we can delete them*)

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2. [What Do We Do With The Information We Collect About You?](#)
3. [With Whom Do We Share the Information We Gather?](#)
4. [What Are Your Rights?](#)
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- Whether we have taken any legal positions (e.g., in connection with any statutes of limitation).

Rather than delete your data, we might de-identify it by removing identifying details.

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7. How Do You Protect My Information?

We protect your personal information with a series of organizational, technological and physical safeguards — but we cannot guarantee its absolute security. We recommend that you use complex and unique passwords for your Times accounts and for third-party accounts linked to them. Do not share your password with anyone.

If you have reason to believe your interaction with us is no longer secure, notify us immediately.

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8. Are There Guidelines for Children?

Times Services are intended for a general audience, and are not directed at children under (13) years of age.

We do not knowingly gather personal information (as defined by the U.S. Children's Privacy Protection Act, or COPPA) in a manner not permitted by COPPA. If you are a parent or guardian and you believe we have collected information from your child in a manner not permitted by law, contact us at privacy@nytimes.com. We will remove the data to the extent required by applicable laws.

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9. How Is Information Transferred Internationally?

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2. [What Do We Do With The Information We Collect About You?](#)
3. [With Whom Do We Share the Information We Gather?](#)
4. [What Are Your Rights?](#)
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The New York Times Company is headquartered in the United States. If you are located outside the United States, your information is collected in your country and then transferred to the United States — or to another country in which we (or our affiliates or service providers) operate.

If we transfer your data out of the European Economic Area (E.E.A.), we implement at least one of the three following safeguards:

- We transfer your information to countries that have been recognized by the European Commission as providing an adequate level of data protection according to E.E.A. standards (see the [full list of these countries](#)).
- We use a service provider in the United States that is [Privacy Shield](#) certified.
- We take steps to ensure that the recipient is bound by E.U. Standard Contractual Clauses to protect your personal data. You can see a [copy of these clauses](#).

In certain situations, the courts, law enforcement agencies, regulatory agencies or security authorities in those countries might be entitled to access your personal information.

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10. What Is Our Legal Basis?

In some jurisdictions, like the European Union and the European Economic Area, we only collect, use or share information about you when we have a valid reason. This is called “lawful basis.” Specifically, this is one of the following:

- The consent you provide to us at the point of collection of your information
- The performance of the contract we have with you
- The compliance of a legal obligation to which we are subject or

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- The legitimate interests of The Times or a third party. “Legitimate interest” is a technical term under international laws, including the European Union General Data Protection Regulation. It means that there are good reasons for the processing of your personal information, and that we take measures to minimize the impact on your privacy rights and interests. “Legitimate interest” also refers to our use of your data in ways you would reasonably expect and that have a minimal privacy impact.

We have a legitimate interest in gathering and processing personal information, for example: (1) to ensure that our networks and information are secure; (2) to administer and generally conduct business within The New York Times Company; (3) to prevent fraud; and (4) to conduct our marketing activities.

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11. What About Links to Third-Party Services?

Some Times Services contain links to third-party websites, resources, vendors and advertisers. These third parties are not Times Services. We do not control (and are not responsible for) third party content or privacy practices. Any personal data you provide to them is not covered by this Privacy Policy.

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12. How Are Changes to This Privacy Policy Communicated?

We periodically update this Privacy Policy. We will post any changes on this page by updating this policy.

If we make a significant or material change in the way we collect, use or share your personal information, we will notify you at least 30 days prior to the changes taking effect. We will do this via email or prominent notice within Times Services. If you object to any change, you can stop using the Times Services.

After we post any changes on this page, your continued use of Times Services is subject to the updated Privacy Policy.

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13. How Can You Contact Us? Who Is the Controller of Your Personal Information?

If you have any questions, email us at privacy@nytimes.com or write us at:

The New York Times Company
620 Eighth Avenue
New York, N.Y. 10018
Attn.: Privacy Counsel

We can also be reached by phone at 1-800-NYTIMES (see [a list of our local telephone numbers outside the United States](#)).

The New York Times Company is referred to in this Privacy Policy as “The Times,” “we” or “our.”

Certain Times Services operate as independent controllers of your personal information. Wirecutter operates as an independent controller of personal information collected through the Wirecutter site available at nytimes.com/wirecutter, pages or ads on social media networks, email messages sent by Wirecutter, your offline contacts and any other service offered by Wirecutter (collectively, the “Wirecutter Services”). If you have any questions regarding Wirecutter, email us at privacy@thewirecutter.com or write us at:

Wirecutter, Inc.
c/o The New York Times Company
620 Eighth Avenue
New York, N.Y. 10018
Attn.: Privacy Counsel

Wirecutter operates the Wirecutter Services in accordance with the practices disclosed in this Privacy Policy. With respect to the Wirecutter Services, Wirecutter, Inc. is referred to in this Privacy Policy as included in “The Times,” “we” or “our.” In this Privacy Policy, Wirecutter Services are included under “Times Services.”

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EXHIBIT 49

1/7/2022 JEREMY DAVIS DEPOSITION TRANSCRIPT EXCERPTS

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CHASOM BROWN, WILLIAM BYALL,
JEREMY DAVIS, CHRISTOPHER
CASTILLO, and MONIQUE
TRUJILLO individually and on
behalf of all other similarly No.
situated, 5:20-cv-03664-LHK-SVK

Plaintiff,

vs.

GOOGLE LLC,

Defendant.

_____/

VIDEO-RECORDED DEPOSITION OF JEREMY DAVIS
REMOTE ZOOM PROCEEDING
Little Rock, Arkansas
Friday, January 7, 2022

REPORTED BY:

LESLIE ROCKWOOD ROSAS, RPR, CSR 3462

Pages 1 - 183

Job No. 5019103

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CHASOM BROWN, WILLIAM BYALL,
JEREMY DAVIS, CHRISTOPHER
CASTILLO, and MONIQUE
TRUJILLO individually and on
behalf of all other similarly No.
situated, 5:20-cv-03664-LHK-SVK

Plaintiff,

vs.

GOOGLE LLC,

Defendant.

_____/

Video-recorded deposition of JEREMY DAVIS, taken
on behalf of the Defendant, Remote Zoom Proceeding from
Little Rock, Arkansas, beginning at 10:06 A.M. Central
Standard Time and ending at 4:29 P.M. Central Standard
Time, on Friday, January 7, 2022, before Leslie Rockwood
Rosas, RPR, CSR No. 3462.

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17 Also Present:

18 JoAnn Yager, Videographer

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I N D E X

FRIDAY, JANUARY 7, 2022

| | |
|--------------|-------------|
| WITNESS | EXAMINATION |
| JEREMY DAVIS | |

| | |
|-----------------|-----|
| BY MR. SCHAPIRO | 9 |
| BY MR. LEE | 169 |

QUESTIONS WITNESS INSTRUCTED NOT TO ANSWER:

| | |
|------|------|
| Page | Line |
| 162 | 6 |

1 information to Google, that is the same thing as Chrome
2 saving -- that is the same thing as the browser -- the
3 Chrome browser saving information?

4 A. I mean, I -- I'm not an engineer working on the
5 Google -- sorry, the Chrome browser. So the distinction 10:40:00
6 of save in that operation or if it is relayed from a
7 memory, what I'm saying is it is possible -- it is
8 possible, and the claim is that despite whether or not
9 Chrome saves it, that that information was collected by
10 Google without consent. That's what I'm saying. 10:40:23

11 Q. I'm going to ask the same question about this
12 next bullet point, "Cookies and site data."

13 Do you believe that Chrome, the browser, has
14 saved cookies and site data from when you were using
15 incognito mode? 10:40:48

16 A. I believe that when they -- excuse me just one
17 second.

18 I believe that when Google states something on
19 their page that they're stating what the behavior will
20 be. But I -- I want to make sure that we don't conflate 10:41:06
21 the claim that just because -- let's just assume that
22 Chrome does what it says on the screen and cookies and
23 site data are not saved.

24 To me, I don't read that as an exclusion of the
25 claim that those cookie and site data might not also be 10:41:28

1 relayed to Google servers, right, to back-end processes
2 at Google. That's the distinction I'm making in my
3 response.

4 Q. I understand. I'm just asking you about this
5 specific piece of it here. 10:41:46

6 What about the third bullet point? Is it --
7 you're not contending, are you, that Chrome, the browser,
8 saved information that you entered into forms while you
9 were using incognito mode? Or are you?

10 A. No, I'm not contending that. 10:42:08

11 Q. How about over on the other side --

12 A. Sorry, what is the question?

13 Q. I was pausing. Sorry.

14 On the next -- just the next set of bullet
15 points, "Your activity might still be visible to." Do 10:42:30
16 you have any reason to dispute the accuracy of -- of that
17 first bullet point, that when you're incognito, your
18 activity might still be visible to websites you visit?

19 A. No, I don't dispute that. I understand that if
20 I request a website, they're going to respond to that 10:42:51
21 request.

22 Q. And same for the second bullet point, do you
23 understand that if you're incognito, your activity might
24 still be visible to your employer or your school?

25 A. Yes, I interpret that to be any network that I'm 10:43:05

1 on. And that might be my employer's network or school
2 network, yes.

3 Q. And then, finally, the third bullet point. Do
4 you have -- do you understand that when you're incognito,
5 your activity might still be visible to your internet 10:43:25
6 service provider?

7 A. Yes. Yes, I understand that is technically
8 possible.

9 Q. Let me ask about this part below. It says,
10 "Block third-party cookies." 10:43:51

11 Do you have a general understanding of what
12 cookies are?

13 A. Yeah. I have a general understanding of cookies
14 to be small text files that are stored by the browser for
15 certain functionality for websites to work. 10:44:09

16 Q. And do you understand that when you open a new
17 incognito session you essentially have a new empty cookie
18 jar?

19 MR. LEE: Objection to form, calls for
20 speculation. 10:44:40

21 THE WITNESS: I'm -- I'm under the general
22 understanding that may be the case, but I've never
23 inspected to verify that that's truly what's happening.

24 Q. BY MR. SCHAPIRO: Do you have any understanding
25 of what happens to cookies from a browsing session after 10:44:49

1 you close out of an incognito browsing session?

2 A. In general, what I understand is that they would
3 be crushed or deleted. But I haven't inspected or
4 verified to see if that happens in 100 percent of the
5 cases -- or 100 percent of the time. But that's my 10:45:14
6 general understanding.

7 Q. Now, Mr. Davis, I understand from some of the
8 submissions in this case that you do most of your web
9 browsing in incognito mode; is that correct?

10 A. Yeah, that is true. I found it convenient, 10:45:41
11 generally, for that to be my default. And so, yes, that
12 is true.

13 Q. And can you give me just a rough sense of the --
14 of the percentage? Do you do, you know, 51 percent of
15 your browsing in incognito mode? 99 percent? Something 10:46:11
16 in between?

17 A. Yeah, I would say it's probably in the low- to
18 mid-90 range. And then there are certain times in which
19 I have to authenticate or want to have a non-incognito
20 mode, or I may accidentally on a new device haven't 10:46:30
21 configured that option out. I'm sure I've launched
22 incognito tabs.

23 But, I mean, it's fair to say the majority of my
24 browsing -- strong majority of my browsing is in
25 incognito when I use Chrome, yeah. 10:46:51

1 Q. I'm happy to show it to you if you want. That's
2 fine. I just thought it would be quicker if you recall.

3 So let's look at Exhibit 3.

4 (Exhibit 3, Plaintiff Jeremy Davis' Objections
5 and Responses to Defendant's First Set of
6 Interrogatories, marked for identification
7 electronically by counsel.)

10:51:52

8 Q. BY MR. SCHAPIRO: Mine is taking a moment to
9 load. I don't know about yours.

10 A. Just refreshing now. I see it now.

10:52:12

11 Q. All right. So feel free to scroll through the
12 document, and let me know at your convenience if these
13 are interrogatories to which you provided -- in -- in
14 conjunction with your lawyers to which you provided some
15 answers.

10:52:37

16 A. And the question was regarding Interrogatory 3;
17 is that correct?

18 Q. Yes.

19 A. Okay. Do you have a line number?

20 Q. Yeah. This would be -- let's see here.

10:52:46

21 MR. LEE: It's line 7 and 8, Mr. Schapiro.

22 MR. SCHAPIRO: Thanks, James.

23 Q. Yeah, lines 7 and 8. There we are. It's right
24 after "Notwithstanding and subject to these objections."

25 A. I see this now. Yes. Yeah, that is familiar to

10:53:22

1 me.

2 Q. And is it accurate that you take careful
3 precautions to protect your privacy?

4 A. Yes, I think I take careful and reasonable
5 precautions to protect my privacy. 10:53:35

6 Q. All right. We can close out of this, if you
7 want.

8 So what are some of the careful precautions you
9 take to protect your privacy?

10 A. Yeah, I -- I thought Google incognito was going 10:53:49
11 to be one of those steps. And so my perspective has
12 changed once I've understood what has happened. But
13 that's one.

14 And I make sure that I use a wireless mesh
15 system at the house. It's a retail mesh, eero. But it 10:54:15
16 basically has a very strong firewall on it, and it
17 prevents leakage and serves as a strong internet router.

18 And then obviously for work and/or other times,
19 I may periodically use a VPN technology.

20 Q. Do you use a VPN at home? 10:54:42

21 A. Primarily for work.

22 Q. Do you consider yourself more privacy conscious
23 than the average person?

24 MR. LEE: Objection to form.

25 THE WITNESS: It's tough for me to know what the 10:55:11

1 average person's perspective of privacy is, and privacy
2 is a complicated topic. I would say I have a reasonable
3 understanding of privacy concerns.

4 I think any informed individual would probably
5 be interested in the same level -- have the same level of 10:55:29
6 interest in privacy that I have.

7 Q. BY MR. SCHAPIRO: So you mentioned the wireless
8 setup you have at your house with the firewall and
9 sometimes using a VPN at work. Are there any other
10 precautions that you take to protect your privacy while 10:55:49
11 you browse the internet that you can think of while you
12 sit here?

13 A. I mean, incognito was my primary response
14 because of the claims that I understood from -- from
15 Google. That's the primary one. 10:56:08

16 I will occasionally use a personal VPN, but it's
17 not on all the time. Like every once in a while I may
18 use a product called NordVPN, I believe is the product.
19 But it's not something I use all the time.

20 Q. And how about when using apps? Is there 10:56:25
21 anything additional or different? Because I guess I was
22 just asking, you know, while you browse the internet.
23 But while you use apps, do you take in anything
24 additional you do to protect privacy?

25 A. If I can use an app anonymously and get utility 10:56:41

1 that you visit to tell you if they might be sharing your
2 data with their business partners?

3 A. Yeah, I believe that that may even be a legal
4 requirement now. It probably hasn't been that way and
5 may not be that way in every jurisdiction, but I would 11:22:02
6 know that it is becoming more frequent that when I visit
7 a cite, like, you'll see a footer where it says, "Hey, in
8 order to use this site, we're going to use cookies," or,
9 "We're collecting this type of information about you." I
10 would say that that's becoming more -- more common. 11:22:20

11 Q. And would you expect a website to list all of
12 its business partners, or would it be sufficient in your
13 view to refer to sharing with business partners?

14 MR. LEE: Objection to form.

15 THE WITNESS: I won't speculate on what's proper 11:22:35
16 for one business to do or not. Their disclosures are
17 their discloses.

18 Q. BY MR. SCHAPIRO: Well, I understand that, but I
19 guess I'm asking about what your -- what your
20 expectations are, your -- including your expectations of 11:22:48
21 privacy.

22 Do you expect that when you -- if you were
23 looking at the disclosures on a website, it would list
24 every business partner that it shares data with, or would
25 tell you in more general terms that it shares with 11:23:07

1 business partners?

2 A. I guess my expectation is not as relevant as
3 what the companies are doing; right? I've seen both
4 examples to your example. I've seen where some companies
5 exhaustively list -- or list off the partners that they 11:23:25
6 sell to or they may just make a blanket claim. And then
7 I think it's up to the individual to interpret whether or
8 not they perceive that as an acceptable term to them.

9 Q. Are you familiar with the website CoinMarketCap?

10 A. I am, yes. 11:23:47

11 Q. And that's one of the websites that -- in some
12 of the submissions in this case, you indicated that's --
13 that's one that you visit regularly; is that correct?

14 A. That's correct.

15 Q. Have you read the Privacy Policy of 11:24:07
16 CoinMarketCap.com?

17 A. I believe I may have reviewed it at some point,
18 but I don't have specific recollection of when.

19 MR. SCHAPIRO: Let's load it up as an exhibit.

20 This will now be Exhibit 4. 11:24:35

21 (Exhibit 4, CoinMarketCap Privacy and Cookie
22 Policy, marked for identification electronically
23 by counsel.)

24 MR. LEE: Andy, while we wait for the Exhibit

25 Share to load, do you have an effective date for the 11:24:46

1 Exhibit 4?

2 MR. SCHAPIRO: Not off the top of my head.

3 Let's see if one is indicated here.

4 Effective date is January 1st, 2020.

5 MR. LEE: Thank you. 11:25:15

6 THE WITNESS: Okay. I have that document.

7 Q. BY MR. SCHAPIRO: Okay. And if you take a look
8 at this first page here, do you see the large heading
9 "What Information Do We Collect?"

10 A. I see that section. 11:25:30

11 Q. And by the way, do you remember one way or
12 another whether you've ever looked at the CoinMarketCap
13 Privacy Policy?

14 MR. LEE: Are you asking if he's seen this one?

15 Q. BY MR. SCHAPIRO: Well, let me ask first more 11:25:47
16 generally.

17 Any version of it?

18 A. Yes, this is familiar to me in terms of I recall
19 there being a Privacy Policy for CoinMarketCap. And this
20 is generally familiar. I, of course, can't tell you if I 11:26:02
21 looked at this exact version.

22 Q. All right. And do you see here under "What
23 Information Do We Collect?" CoinMarket states that they
24 correct -- and I'm looking down at letter E, quote,
25 "Information related to your use of the website and/or 11:26:19

Page 52

1 the mobile application, including IP address, geographic
2 location, and date and time of your request"?

3 Do you see that?

4 A. Yes, I see that.

5 Q. And do you have any objection to CoinMarketCap 11:26:35
6 collecting that data?

7 A. As they're disclosing it, obviously no. It
8 seems that they're disclosing this because it's necessary
9 for the functionality of their site and service.

10 Q. And would it be objectionable to you if they 11:27:01
11 were, rather than collecting it themselves, sharing the
12 data with some other companies?

13 A. If they do not disclose that they are selling or
14 sharing that information, yes.

15 Q. Let's take a look at page 3 under the section 11:27:15
16 entitled "Cookies and Web Beacons."

17 Let me know when you see that.

18 A. Okay. I see that section.

19 Q. And you'll see that it indicates here -- this is
20 towards the end of the very first paragraph, 11:27:48
21 "CoinMarketCap and its ad management partners ('Ad
22 Partners') use cookies to record current session
23 information. Our ad partners may also from time to time
24 use web beacons (also known as internet tags, pixel tags,
25 and clear GIFs). These web beacons are provided by our 11:28:20

1 ad partners and allow ad partners to obtain information
2 such as the IP address of the computer that downloaded
3 the page on which the beacon appears, the URL of the page
4 on which the beacon appears, the time that the page
5 containing the beacon was viewed, the type of browser 11:28:45
6 used to view the page, and the information in cookies set
7 by the ad partners."

8 And then at the very end, it says -- of that
9 paragraph, it says, "You can opt-out of Google Analytics'
10 data collection with the Google Analytics opt-out browser 11:29:10
11 add-on."

12 Did I read that correctly?

13 A. I followed along as you read it. (Nods head.)

14 Q. And so when -- if and when you read this
15 website's Privacy Policy, you would have been aware that 11:29:34
16 Google is receiving your data when you visit the
17 CoinMarketCap website; correct?

18 MR. LEE: Objection to form.

19 THE WITNESS: No. I actually have no specific
20 recollection of the verbiage that we just read. I don't 11:29:49
21 have any recollection of reading that.

22 Q. BY MR. SCHAPIRO: Well, I'm not asking
23 necessarily if you have a recollection of it. I'm asking
24 if -- if you had read that, it would have told you there,
25 right in black and white, correct, that Google is 11:30:07

1 receiving your data when you visit the website; right?

2 MR. LEE: Are you saying in incognito mode or
3 not in incognito mode?

4 Q. BY MR. SCHAPIRO: You may answer.

5 A. I would have the same, you know, question as to 11:30:25
6 whether or not the behavior would be expected in
7 incognito mode, which is the question in this case.

8 But I can tell you that I didn't -- prior to
9 becoming involved in this case and the claims of the
10 materials on Google Analytics, I was not aware of this 11:30:50
11 opt-out browser add-on.

12 Q. Do you know if you ever clicked on a link --
13 here you see it says, "Google Analytics opt-out browser
14 add-on." It's in blue. I'll represent that there's a
15 link to that. 11:31:19

16 Do you recall ever clicking on a link about the
17 Google Analytics opt-out browser add-on?

18 A. I do not. My first -- again, my first exposure
19 to this was in documentation in review of this case.
20 Prior to that, I was not aware of this opt-out plug-in. 11:31:34

21 Q. Let's introduce -- let's take a look at what --
22 of what you would find if you click that link. This will
23 be Exhibit Number 5.

24 (Exhibit 5, Google Analytics Opt-out Browser
25 Add-on, marked for identification electronically 11:31:53

1 behavior, if that's the question, I think that would be a
2 step in the right direction. But I don't think that that
3 would preclude any of the damages or violation of privacy
4 that may have occurred if that stuff was being stored and
5 not deleted. I think that's the fairest way I could 11:53:43
6 answer that question.

7 Q. BY MR. SCHAPIRO: You mentioned in your answer a
8 moment ago logging in. What were you referring to there?

9 A. Oh, sure. Logging in. That is to provide a
10 username and password in, for example, Gmail account. I 11:54:05
11 have a Gmail account. If I want to check Gmail, I would
12 have to authenticate to access that service.

13 Q. And do you understand that if you log in to your
14 Gmail account, is it still your expectation that Google
15 will receive no information about you? Or does that -- 11:54:25

16 A. No, I -- no. In the case in which I'm
17 identifying myself to Google, I -- I understand that they
18 are aware of what my activities are. When I have
19 identified myself to them.

20 Q. Do you still have the Complaint handy? 11:55:00

21 A. I have it here, yes.

22 Q. So can I ask you to look at paragraph 163 of the
23 Second Amended Complaint? And, you know, just for the
24 record, even though it's a document on the docket, why
25 don't we go ahead and introduce it. 11:55:20

1 Feel free to refer to the version that you have
2 there, the hard copy, if that's easier. But let's
3 introduce as the next exhibit the Second Amended
4 Complaint, just to have a complete record.

5 So this will be Exhibit 6, I think. 11:55:35

6 A. Sir, what was that paragraph number again?

7 Q. Paragraph 163.

8 A. 163. Okay.

9 (Exhibit 6, Second Amended Complaint, marked for
10 identification electronically by counsel.) 11:56:03

11 THE WITNESS: I see it at the bottom of a page,
12 and it starts with: "It is common knowledge that Google
13 collects." Is that the paragraph in question?

14 Q. BY MR. SCHAPIRO: It is.

15 A. All right. 11:56:15

16 Q. So, actually, why don't you go ahead, if you
17 don't mind, just read that first sentence out loud.

18 A. Sure. What I see here is, paragraph 163, "It is
19 common knowledge that Google collects information about
20 web-browsing activity of users who are not in private 11:56:31
21 browsing mode. It is also common knowledge" --

22 Q. You can stop. I just want to ask you first
23 about that first sentence.

24 A. Okay.

25 Q. Feel free to read the whole thing, so you -- if 11:56:45

1 you want to, to yourself, but...

2 So -- so this is referring to users who are not
3 in private browsing mode; correct?

4 A. Correct. I see the emphasis on not in private
5 browsing mode. 11:57:06

6 Q. Yes. And is that -- so your Complaint here says
7 that this is common knowledge. Is that knowledge that --
8 that you, Jeremy Davis, had also prior to this lawsuit?

9 A. Yes, that's my understanding.

10 Q. And do you agree, as someone who works in the 11:57:24
11 space that you work in, that it is -- it's common
12 knowledge that Google collects information about web
13 browsing activity when people are not in private mode?

14 A. Yeah, I would say that's a fair statement.

15 Q. And is that impacted one way or the other by 11:57:57
16 whether the user has Google's -- had Chrome's sync
17 feature enabled? S-Y-N-C.

18 A. I'm not 100 percent sure if that is solely
19 required.

20 Q. No, I guess I'm just asking you -- well, let me 11:58:17
21 back up.

22 Are you aware that -- that Chrome has various
23 modes? For example, incognito is one mode; right?

24 A. (Nods head.)

25 Q. You have to answer verbally so the court 11:58:30

1 reporter can get it.

2 A. Yes, I understand incognito to be a mode of
3 operation for Chrome.

4 Q. And you understand that there's something that
5 is sometimes called basic mode, which is just regular old 11:58:42
6 Chrome right out of the box?

7 A. Yeah, it's the standard wide screen. I would
8 call that normal Chrome. That's how I refer to it. So a
9 normal Chrome session and an incognito session, yes.

10 Q. And do you understand that users can sometimes 11:58:58
11 choose to enable a feature called sync, S-Y-N-C, as well,
12 if they have multiple devices?

13 A. I believe I'm familiar with this in the profile
14 settings of Google. Like once you're logged in, I think
15 that's an option that is presented to you. 11:59:15

16 Q. And do you have any belief that just using plain
17 old Chrome right out of the box, without Sync enabled,
18 gives you privacy protection so that Google won't see
19 what you're doing?

20 MR. LEE: Objection to form, calls for 11:59:38
21 speculation, lack of foundation.

22 THE WITNESS: I would assume that -- I can give
23 you my personal perspective. I don't assume privacy in,
24 quote/unquote, "normal Chrome sessions." Why else would
25 the incognito mode exist and why else would the Privacy 12:00:01

1 Policy refer to it as the prescribed way to browse
2 privately?

3 So my assert- -- my impact of understanding
4 privacy assumptions are fundamentally different between
5 the two.

12:00:19

6 Q. BY MR. SCHAPIRO: All right. So here in this
7 same sentence, a paragraph of your Complaint, it also
8 says, "It is also common knowledge that Google causes
9 targeted advertisements to be sent based on that
10 information."

12:01:01

11 Do you see that?

12 A. Yes, I've read that sentence.

13 Q. And do you generally understand that on what for
14 you, I guess, are the rare occasions when you are not
15 incognito, if you see ads tailored to your interests it's
16 because Google or some other entity has received
17 information about your past browsing?

12:01:17

18 A. Yes, I understand that.

19 Q. When you've used Chrome, have you ever seen ads
20 that appear to be tailored to you?

12:01:37

21 A. In normal mode, yes.

22 Q. And I assume the flip side, but not in incognito
23 mode?

24 A. I have actually experienced rarely a term that I
25 have searched for or a topic, I've seen those things show

12:01:59

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1 up even in incognito mode. It is rare. It is rate, not
2 the rule, but I have seen that occur in incognito mode.

3 Q. Has that been when you're within a single
4 incognito session, that is you might have multiple tabs
5 open but you've been using incognito during the -- you 12:02:24
6 know, without closing out of it?

7 A. It's possible. I'm not sure of the conditions
8 specifically, but I suppose that's possible.

9 Q. Do you have any belief as to whether a targeted
10 advertising can be beneficial to users such as yourself? 12:02:52

11 MR. LEE: Objection to form, vague as to scope.

12 THE WITNESS: I would say that I understand that
13 there's a whole industry and business around targeted
14 advertising. And I suppose there could be some utility.
15 I think it varies by person. But, yeah, I would say 12:03:15
16 there's probably utility in those ads.

17 Q. BY MR. SCHAPIRO: Is Chrome the browser -- the
18 primary browser that you use to surf the internet?

19 A. Yes, it is the primary.

20 Q. What other browsers, if any, do you use? And 12:03:56
21 maybe just to narrow it a little bit, I guess I would
22 say -- why don't we start with currently.

23 A. Yeah, the big three that I generally find
24 installed on any of my devices would be the native OS
25 browser, so like if I'm on a Windows device there would 12:04:23

1 be what historically was Internet Explorer or Mount Edge.
2 I will generally load Mozilla Firefox on most of the
3 computing devices.

4 And then on the Apple devices, I have, of
5 course, Safari. So I would say the primaries that I 12:04:41
6 would use, it's always Google -- sorry, Chrome has been
7 my go-to for a long time. For a long time it was the
8 fastest, and so it ingrained a preference in faster
9 browsing in me. That's why I use it as primary. Along
10 with the existence of incognito mode for private 12:05:01
11 browsing. They were there first, I think, before many of
12 the other browsers introduced those features.

13 But those would be the mix of browsers that I
14 might use.

15 Q. And when you use other browsers, let's say 12:05:16
16 Safari, for example, or Firefox Mozilla, do you typically
17 use their private browsing mode?

18 A. Yes, I do.

19 Q. And is that with the same -- roughly the same
20 breakdown that you've described earlier? I can't 12:05:43
21 actually remember what the percentage was, but it was the
22 overwhelming percentage of time.

23 A. Yes. I generally use -- if you'll recall in my
24 earlier testimony, we talked about those parameters to
25 set them into default -- 12:05:59

1 Q. Uh-huh.

2 A. -- private mode. Those other browsers support
3 the same mechanism. And I configure them in a similar
4 way.

5 MR. LEE: Hey, everybody. I'm getting a frozen 12:06:09
6 screen. Are you guys getting a frozen screen?

7 MR. SCHAPIRO: Let's see. Yeah, although I can
8 hear perfectly well.

9 MR. LEE: Yeah, the audio is through the phone.

10 MR. SCHAPIRO: I'm no longer frozen. Do you 12:06:23
11 want to wave your hands, James? Let me see if I -- yeah,
12 I see you moving.

13 MR. LEE: I don't see Mr. Davis moving. That's
14 the one I'm concerned of.

15 THE WITNESS: Oh, my Zoom session just dropped. 12:06:36

16 THE REPORTER: Shall we go off the record,
17 Counsel?

18 MR. LEE: Yeah, let's take a break and figure
19 this out.

20 THE VIDEOGRAPHER: Going off the record. The 12:06:41
21 time is 12:07 p.m.

22 (Recess.)

23 THE VIDEOGRAPHER: Back on the record. The time
24 is 2:19 p.m. -- 12:19. Sorry.

25 MR. LEE: Oh, you know what? I should mention 12:19:50

1 it's 1:20 here our time.

2 THE WITNESS: It's 12:20.

3 MR. LEE: I'm sorry, 12:20 here. I think we can
4 go one more session before lunch.

5 THE WITNESS: I'm good, yeah. 12:20:02

6 MR. LEE: Okay. But I think after the next hour
7 block, Andy, we'll probably need to take lunch.

8 MR. SCHAPIRO: Whatever is best for the witness
9 is fine for us. I happen to be in the Central Time Zone
10 as well, so this one will work out nicely. 12:20:14

11 MR. LEE: Okay. Great. I forgot about that.
12 That's good.

13 Q. BY MR. SCHAPIRO: All right. Mr. Davis, you'll
14 recall a little bit earlier we were talking about steps
15 that you take to protect your privacy. Do you remember 12:20:26
16 that?

17 A. Yes, I do.

18 Q. And are you aware that in Chrome settings you
19 can enable a feature called "block all cookies"?

20 A. I'll have to take your word for it. I don't 12:20:49
21 have specific recollection of that capability.

22 Q. Do you know --

23 THE REPORTER: Was there an objection, Mr. Lee?

24 MR. SCHAPIRO: No. James made a comment.

25 MR. LEE: I was being silly. Go ahead. 12:21:06

1 good question. I should maybe look into that further.

2 Q. BY MR. SCHAPIRO: On what devices do you use
3 Chrome?

4 A. Sure. I use them on my laptop computers,
5 desktop computers, mobile phone, iPhone. And I believe I 12:27:14
6 even have it installed on an iPad.

7 Q. And it sounded like you used plural when you
8 said laptop computers, desktop computers. Do you have
9 more than one laptop, more than one desktop?

10 A. I do. I have multiple in my home. Being in the 12:27:35
11 industry, right, computers are pretty common for me.

12 Q. And do -- do any other family members or friends
13 ever use any of your devices?

14 A. On very rare occasions. Like, if someone needs
15 to get online to do something, I might let them -- I 12:28:00
16 might log them in as a guest on one of the machines.

17 But as a practice and a rule, no. Everyone in
18 the home has their own devices and generally stick to
19 those devices.

20 Q. And the practice you have of using incognito for 12:28:24
21 your browsing that you just described, is that the same
22 across your devices, or is there some difference
23 depending on what device you're using?

24 A. No, it's my general practice, common practice,
25 across all of the devices. 12:28:42

1 Q. When you have an incognito session open, about
2 how long do you usually keep it open?

3 Let me make that more clear. Do you ever keep
4 tabs or windows open for -- for more than a day?

5 A. Yeah, there's occasions where I do. As a 12:29:03
6 general practice, I generally will close out of the
7 browser session. But there have been occasions where I'm
8 in the middle of researching something or in the middle
9 of working on something and I'll leave it open, suspend
10 the computer, and come back to it the next day. 12:29:22

11 Q. How about leaving tabs or windows open for more
12 than a week? Is that something that you commonly do?

13 A. There are occasions in which I have, yes.

14 Q. Is that common or -- or rare?

15 A. It's -- I would say it's -- it's on the rarer 12:29:47
16 side, yeah. Because most of the times I'm getting in,
17 getting out, doing what I need to do. But it does --
18 there are occasions in which I'll -- yeah, I'll leave
19 them long running.

20 Q. So I think earlier in the deposition today you 12:30:09
21 were telling us about your understanding of the -- the
22 incognito splash screen. Do you recall that?

23 A. Yes.

24 Q. And prior to your involvement in this case, was
25 that splash screen the only document that contributed to 12:30:47

1 your understanding or your belief about what incognito
2 does, or were there other documents that you had
3 reviewed?

4 MR. LEE: Objection to form, mischaracterizes
5 his prior testimony. 12:31:11

6 You can answer.

7 THE WITNESS: Yeah. No, so I had reviewed both
8 the Google Terms of Service, the Google Privacy Policy,
9 as well as material, maybe blog posts, on incognito. So
10 I was not solely informed by the splash screen. 12:31:27

11 Q. BY MR. SCHAPIRO: And this is -- so this prior
12 to involvement in the lawsuit, you had looked at, you
13 say, the Privacy Policy and maybe some blog posts?

14 A. That's correct.

15 Q. By the way, you said that when you saw the story 12:31:55
16 or advertisement about this lawsuit, it peaked your
17 interest. Had you, prior to that point, ever seen any
18 articles or blog posts suggesting that incognito -- not
19 by Google, suggesting that incognito mode might not be
20 private in the way that you expected? 12:32:23

21 MR. LEE: Hold on.

22 I just want to object to the extent that you are
23 mischaracterizing Mr. Davis' testimony. He did not -- he
24 did not testify that he responded to an advertisement.

25 MR. SCHAPIRO: I withdraw the point about the 12:32:37

1 advertisement.

2 Q. So my question, nevertheless, is: You said when
3 you saw this, I'll just say a story about this lawsuit,
4 it piqued your interest. And I was asking prior to that
5 point, had you ever seen any articles or blog posts, 12:32:53
6 presumably not from Google, suggesting -- causing you to
7 suspect or suggesting that incognito might not be private
8 in the way you had thought?

9 A. Fairly recently, prior to the case, I believe
10 there was a journal entry or a hypothetical post that 12:33:19
11 said it was hypothetically possible that Google could be
12 aggregating information. I think there was an article
13 written about that. And I even think I recall reading
14 Google responding to that article and saying that they --
15 perhaps that they did not. 12:33:42

16 And so that's my recollection of any materials
17 that might have indicated that maybe things were not as
18 they appear with regard to incognito.

19 Q. And do you remember about how long before the
20 lawsuit that was? 12:34:04

21 A. I'm pretty sure it was within a year. Like, it
22 was less than a year.

23 Q. And then since filing the lawsuit, I believe you
24 told us earlier that you continued to use Chrome because
25 you didn't want to change your -- your activity. Am I 12:34:35

1 characterizing that right?

2 A. Yeah. I thought it would be best to be
3 consistent with my activity during the course of the
4 lawsuit.

5 Q. While you're continuing to use Chrome, have you 12:34:52
6 taken any -- have you taken any steps to -- to prevent
7 what you contend is the improper collection of your
8 information?

9 A. Again, I'll restate. I haven't changed my
10 behavior. I've kept my behavior consistent since the 12:35:17
11 lawsuit started.

12 Q. And by that, I assume that means including the
13 things like extensions, add-ons, settings, et cetera?

14 A. Yeah, I have not taken additional action or
15 leveraged any of those capabilities. If you're -- if 12:35:34
16 you're specifically asking me, like, have I installed the
17 ad blocker or the ad -- extension add-on, the answer is
18 no. I have not made use of those things you mentioned
19 earlier in the call.

20 Q. Mr. Davis, do you believe that you entered into 12:36:01
21 a contract with Google?

22 A. The answer is yes. And not only do I believe
23 that, I believe the Court has affirmed that a contract
24 exists. Not excluding -- not exclusive to, but I believe
25 including the splash screen, the Google Terms of Service 12:36:23

1 and the Google Privacy Policy.

2 I'm not a lawyer. I'm sure there may be other
3 documents that the Court considers constitution to that
4 contract, but that's my understanding in this case.

5 Q. Recognizing that you're not a lawyer, but do you 12:36:40
6 have any thoughts, as the person who entered into the
7 contract, of what other documents might be part of it? I
8 think you just listed the splash screen, the Google Terms
9 of Service and the Google Privacy Policy.

10 You said maybe there are some others. Any 12:37:00
11 thoughts on what those might be?

12 A. Oh, yeah, the other one I think that's of
13 interest may be in the health file related to Google
14 Analytics. I believe it made specific mention of the
15 Google Privacy Policy. That would be one additional I 12:37:17
16 would add to that list.

17 And it said that Google Analytics would adhere
18 to the Privacy Policy, which clearly states that I am put
19 in control of what information Google collects about me
20 and that we can use Google services to manage our 12:37:38
21 privacy. And if I choose to browse privately, I can
22 browse the web privately using Chrome in incognito mode.

23 And so the way that I would assert that privacy
24 would be to use incognito mode.

25 Q. And in connection with this contract, did you 12:38:04

1 out this copyright point. But I -- my understanding is
2 that this is the Terms of Service that were in effect
3 through November -- from March 29th, 2003, to
4 November 4th, 2005.

5 MR. LEE: And are you making that representation 12:49:40
6 to this witness today?

7 MR. SCHAPIRO: I'm making that representation to
8 this witness today. And if I'm wrong, we can, of course,
9 clear it up later, but...

10 MR. LEE: Okay. 12:49:50

11 THE WITNESS: So if you don't mind, I'd like to
12 read through this just to see if it's familiar to me.
13 There's a lot of information here, and it's quite old.

14 Q. BY MR. SCHAPIRO: Of course. You're entitled.

15 A. Okay. Thanks for give me the opportunity to 12:50:54
16 review.

17 Q. All right. Do you recall if you agreed to the
18 Google Terms of Service when you opened your account?

19 A. I would have absolutely had to. I think it was
20 a prerequisite to get the account, is my recollection. 12:51:08

21 Q. And in these Terms of Service, did Google
22 represent to you that you could control what information
23 Google collects by enabling private browsing mode?

24 A. I don't think that was temporarily possible,
25 because I don't think incognito existed at this time, 12:51:30

1 when -- when Gmail was first launched.

2 Q. So I'll ask you to take a look at the Second
3 Amended Complaint again, paragraph 31, please.

4 A. Paragraph 31?

5 Q. Yes, sir. 12:51:56

6 A. Okay. I'm there.

7 Q. And do you see there's a citation to the Google
8 Privacy Policy? And this is in the -- to the May -- the
9 May 28th -- I guess in the Complaint it just says,
10 "May 2018 modification to the Privacy Policy." 12:52:32

11 Do you see that?

12 A. Yes, I see that line.

13 Q. And do you know whether you reviewed that
14 version of the -- ever reviewed that version of the
15 Privacy Policy? 12:52:45

16 A. I did.

17 Q. And do you recall whether that was before or
18 after your involvement in this litigation?

19 A. Yes, I believe I rereviewed it when the
20 incognito feature was launched. And this seems to be 12:52:58
21 aligned with that timeline.

22 Q. And did you agree to the Google Privacy Policy?

23 MR. LEE: Objection to form.

24 THE WITNESS: I don't know -- I don't know that
25 there's -- like, you agree to Terms of Service; right? 12:53:17

1 But I don't believe there's a -- I just don't understand
2 the question. Did I agree to it?

3 Q. BY MR. SCHAPIRO: Did you ever indicate --

4 A. Did I agree with the terms? Or did I -- did I
5 agree with what they were communicating? Or are you 12:53:33
6 asking if I told Google that I agreed to the Privacy
7 Policy? I'm just unclear on your question.

8 Q. Did you ever indicate to Google in any way that
9 you did not agree to its Privacy Policy?

10 MR. LEE: Objection to form. 12:53:51

11 THE WITNESS: No. No. To my recollection, I
12 never told Google that I disagreed with its statements in
13 its updated Privacy Policy.

14 Q. BY MR. SCHAPIRO: Let's take a look at the --
15 what I will represent to you is the updated Privacy 12:54:08
16 Policy referred to in your Complaint, effective from
17 May 28th, 2018, to January 21st, 2019.

18 (Exhibit 9, Google Privacy Policy, marked for
19 identification electronically by counsel.)

20 Q. BY MR. SCHAPIRO: And can you tell me what 12:54:36
21 sections in here, if any, you believe promised you that
22 browsing in private mode would prevent Google from
23 receiving your information?

24 A. One second. This is the evidence 12 -- or
25 the -- 12:55:08

1 session.

2 THE WITNESS: And a followup question, when you
3 say "collected," you mean collected by Google back-end
4 services or the browser itself?

5 Q. BY MR. SCHAPIRO: By Google in any way. 13:05:50

6 A. Google in any way.

7 MR. LEE: Let me object to the incomplete
8 hypothetical.

9 But go ahead.

10 THE WITNESS: Okay. So I just want to restate 13:05:56
11 the hypothetical to make sure I have a complete
12 understanding, sir. If -- the hypothetical proposed is,
13 if, when using Google Chrome in incognito mode, any
14 information that's collected by the browser in that
15 session, if that was discarded at the end of that session 13:06:16
16 by Google, would that alleviate my concerns? Do I have
17 that roughly right?

18 Q. BY MR. SCHAPIRO: Yeah. The only difference is
19 I said discarded or disassociated, so what I meant there
20 is -- just so there's no lack of clarity about what 13:06:34
21 discarding means, you know. As you know, as someone in
22 the tech field, something is always -- you know, even
23 when you put something in your trash, it's there
24 somewhere, but you just can't find it. It's not indexed.

25 A. I understand. 13:06:50

1 I think that would be a step in the right
2 direction for Google to take. If hypothetically they
3 would want to take that action, I -- if you're asking me
4 should -- because that's my perception of how incognito
5 should work, so I will respond by saying it would be 13:07:09
6 great if Google made the button work the way it is
7 purported to work; right? And if that is the
8 hypothetical outcome here, that would be a positive
9 development for privacy in my opinion.

10 Q. Do you still have the Privacy Policy in front of 13:07:27
11 you, Exhibit 9?

12 A. I do.

13 Q. So you see there's a section down towards the
14 bottom of the first page entitled "Information Google
15 Collects"? 13:07:45

16 A. Yes, I see that section.

17 I can't see all of it. The exhibit is over it,
18 but I have a printed copy here as well.

19 Q. Right. I agree. I see the exhibit tab is sort
20 of over the paragraph, but if you just scroll through it, 13:07:58
21 you'll see some relatively large headings. Do you see --

22 A. Are you asking about the "Things to create" --
23 "Things you create or provide to us"?

24 Q. Yes. And then if you go further down,
25 "Information we collect as you use our services," do you 13:08:22

1 see that?

2 A. Yes, I do.

3 Q. And -- and this lists -- this provides a
4 description of information that Google collects when you
5 browse on a website that uses Google services; correct? 13:08:42

6 A. To use Google services, which I assume to be
7 their applications, Gmail -- that's what they mean by
8 Google services, correct?

9 Q. I'll take whatever your understanding of it is.

10 A. Yes. Yeah, I understand that when I am 13:09:06
11 authenticated to Google and use their services, I
12 understand this information could be collected, but I
13 don't understand that to be the case when I am told to
14 browse privately in incognito mode, so there's a
15 distinction there; right? 13:09:29

16 Q. So just to be --

17 A. But if I'm authenticated in a normal browser
18 session using Google services, I understand this
19 information to be collected.

20 Q. When you say "authenticated," are you 13:09:42
21 distinguishing -- are you saying that you don't believe
22 Google receives this information if you're not signing in
23 and you're just in what you call normal mode?

24 A. Oh, no. Sorry. I misspoke there. Anytime I'm
25 in normal mode, I would expect Google to collect this 13:09:58

1 information.

2 Q. And other than what you pointed to on the first
3 page, where it says you can also choose to browse the web
4 privately, is there anywhere here in this list of
5 information that is collected by Google anywhere in here 13:10:13
6 that it tells you that incognito mode would prevent
7 Google from receiving the data?

8 MR. LEE: Objection to form, mischaracterizes
9 prior testimony. Mr. Davis didn't point to just one
10 sentence in the Privacy Policy in his prior answer. He 13:10:30
11 pointed out multiple.

12 MR. SCHAPIRO: Let me rephrase.

13 Q. Other than the language that you pointed to on
14 the first page in our -- when we were discussing this
15 document earlier, do you see anything in this description 13:10:46
16 of data that is collected by Google that says that
17 private browsing prevents Google from receiving the data?

18 A. I don't see anything about incognito mode here.
19 However, I would say I don't have to, because the
20 assertion is that I am in control and that this 13:11:10
21 information, which I've already testified earlier, is
22 private information. If the mechanism that Google
23 provides to me is private browsing in incognito mode, as
24 we just read on the first page, then why would I make an
25 assumption that it's okay to collect this information in 13:11:32

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1 incognito mode? I can't make that connection, if that's
2 what you're asking me.

3 MR. SCHAPIRO: So we've been going about an
4 hour. Would this be a decent time to take a lunch break?

5 MR. LEE: Yeah. You read my mind. Thank you, 13:11:50
6 Mr. Schapiro.

7 MR. SCHAPIRO: While we're still on the record,
8 James, could you, during the lunch break, send us a scan
9 of the marked up documents that Mr. --

10 MR. LEE: Sure. I can try. It's not my office, 13:12:03
11 but -- I've got to see who's around. But, just for the
12 record, there are no notations on the documents.

13 Mr. Davis just highlighted some language on the privacy
14 page, which he's already called out. If you want me to
15 email that to you or scan that to you, I can, but there's 13:12:20
16 no --

17 MR. SCHAPIRO: Yes.

18 MR. LEE: -- notes or anything.

19 I don't want you to have the wrong idea.

20 MR. SCHAPIRO: I see. That's fine. Just -- I 13:12:28
21 don't need the whole documents then. Just -- if you just
22 send me whatever the highlighted parts are, that would be
23 great.

24 MR. LEE: Sure. Okay. We'll do that.

25 MR. SCHAPIRO: All right. I'm happy to go off 13:12:38

1 incognito would -- I think I heard you say the word
2 "disable" or "break" the ad tech technology on Any Town's
3 site.

4 Q. BY MR. SCHAPIRO: Correct.

5 A. No, I don't have an expectation that Google 14:24:39
6 breaks ad tech and ad serving.

7 Q. Do you have an expectation that incognito
8 disables or breaks ad serving by Google -- by Google Ad
9 Manager?

10 A. Yes, I have a reasonable expectation of that, 14:25:04
11 because as we stated earlier, in the Google Analytics
12 help file, it states, on Google's own product, that it
13 will adhere to the Google Privacy Policy, and in the
14 Google Privacy Policy, it states that I can browse the
15 web privately using Chrome in incognito mode. 14:25:26

16 So, yes, in the case of Google's own product and
17 the reference to their own Privacy Policy, which it
18 states it adheres to, Google asserts that I am in
19 control, that I can browse privately, and it will not
20 collect the information that I consider private. 14:25:47

21 Q. Have you ever seen ads on the internet when you
22 are browsing in incognito mode?

23 MR. LEE: Objection. Asked and answered.

24 MR. SCHAPIRO: I don't think he answered about
25 in incognito mode, but anyway. 14:26:05

1 THE WITNESS: I'm happy to answer.

2 Previously in testimony we talked about ads
3 served in normal mode as well as ads served -- you'd
4 asked about ads served in incognito mode, and I've seen
5 ads served in both, correct. Again, incognito mode, to 14:26:24
6 my knowledge, does not break ad tech, so I would have
7 seen ads served in incognito mode.

8 Q. BY MR. SCHAPIRO: Including ads served up by
9 Google's ad technology?

10 MR. LEE: Objection to form, calls for 14:26:45
11 speculation.

12 THE WITNESS: I agree. I would have to
13 speculate as to what ad technology a given site was
14 using. I didn't evaluate that, but I would say that
15 there's probably a strong possibility that ads served to 14:26:56
16 me in incognito mode would have been at some point served
17 by Google Analytics.

18 Q. BY MR. SCHAPIRO: And did that fact alert you to
19 the fact that these Google services were in receipt of,
20 for example, the IP address you were using at the time, 14:27:25
21 such that the ad could be served to you?

22 MR. LEE: Object to the extent you called his
23 speculative answer a fact. He just told you that he
24 doesn't know.

25 THE WITNESS: I'll stand by my previous answer. 14:27:41

1 Q. BY MR. SCHAPIRO: Well, I want to be clear I
2 understood your previous answer to be -- and you say
3 there's probably a strong possibility that ads served to
4 you in incognito mode would have been at some point
5 served by Google. 14:28:04

6 And my question to you is a followup, which is:
7 If you saw ads served in incognito mode and if you had an
8 understanding that there's a strong probability, given
9 what Google's business is, that some of those ads were
10 served by Google, did that alert you to the possibility 14:28:28
11 that Google was receiving, for example, your IP address
12 in order to serve ads?

13 A. I understood that they were serving me ads.

14 Q. How did you think they were serving you ads if
15 they didn't know what your IP address is or -- or what 14:28:49
16 type of client the -- the web page was on?

17 MR. LEE: Objection -- objection. Calls for
18 speculation.

19 THE WITNESS: I don't believe I claimed -- I
20 don't believe I claimed that they didn't have my IP. 14:29:11
21 Like, you said that. I didn't say that. Right? But all
22 I know is that they would have -- they do serve ads
23 still, because you get ads in incognito mode. I'm not
24 sure how -- what -- how more accurately I can answer the
25 question. 14:29:36

1 you mind if we take two minutes?

2 MR. SCHAPIRO: I've been there. Well, let's
3 make it five. Let me just finish. I have two more
4 questions about this document, if you can wait.

5 MR. LEE: Sure. Yeah, I can wait. 14:53:35

6 Q. BY MR. SCHAPIRO: So the final bullet point
7 there says, "You might see search results and suggestions
8 based on your location or other searches you've done
9 during your current browsing session."

10 Has that ever happened to you while you're in 14:53:47
11 incognito?

12 A. I understand that to be a consistent statement,
13 yeah. Like, while I'm still in the same session, if I've
14 shared my location exclusively, which I think it prompts
15 if you want to share your location, to the extent of 14:54:01
16 what's controllable by the user. Yeah, I don't contest
17 that statement.

18 Q. And that's not something that you're objecting
19 to in this lawsuit; correct?

20 A. No, that's correct. 14:54:15

21 Q. All right. Let's go off the record.

22 THE VIDEOGRAPHER: Going off the record. The
23 time is 2:54 p.m.

24 (Recess.)

25 THE VIDEOGRAPHER: Back on the record. The time 15:04:43

1 is 3:05 p.m.

2 Q. BY MR. SCHAPIRO: Mr. Davis, are you aware of
3 ways in which you can sell your personal information?

4 A. Are you talking specifically of my browsing
5 activity? 15:05:06

6 Q. I am.

7 A. Yes. I believe there's several different
8 browsers on the market, like Kylo and Brave, and I think
9 there's a few others, that will compensate you if you
10 choose to share and sell that information. I'm generally 15:05:20
11 aware of it.

12 Q. And approximately when did you first become
13 aware of these websites' practice of paying users a fee
14 for their browsing data?

15 A. I think it was very close to the time that the 15:05:39
16 suit was filed or started. Very close to that time.

17 Q. Have you ever tried to sell any of the
18 information at issue in this lawsuit, like your browsing
19 history, for example?

20 A. I have not, as of yet. 15:05:57

21 Q. And do you have a belief as to how much your
22 personal information is worth?

23 A. Well, I think -- are you asking in --
24 specifically in this case or in general?

25 Q. Well, I'm asking in general, but I'm asking 15:06:14

1 about the type of information that you put at issue in
2 this case.

3 A. I think it's clear that there is some value to
4 all personal data. There's whole marketplaces and the
5 fact that a marketplace is compensating people for it. I 15:06:32
6 haven't really done the analysis to say whether or not
7 those rates that they are providing are fair market or
8 not. I would have to -- to give you a complete answer, I
9 would have to do a lot more analysis and get pretty
10 specific on, like, which data, et cetera. 15:06:50

11 Q. And has the conduct that you're alleging in this
12 lawsuit affected your ability to sell your information in
13 any way?

14 A. Affected my ability to sell my information?
15 Considering I haven't sold my information, I'm not sure 15:07:07
16 I've fully explored that or not. So my answer is I don't
17 know. Because I have not attempted to sell my
18 information, I'm not sure if this has impacted my ability
19 to sell my information or not.

20 Q. Sure. 15:07:27

21 And has the misconduct that you've alleged
22 against Google in any way affected the value of your
23 information?

24 A. Can you restate the question? I'm not sure I
25 follow. 15:07:38

1 STATE OF CALIFORNIA) ss:

2 COUNTY OF MARIN)

3
4 I, LESLIE ROCKWOOD ROSAS, RPR, CSR NO. 3462, do
5 hereby certify:

6 That the foregoing deposition testimony was
7 taken before me at the time and place therein set forth
8 and at which time the witness was administered the oath;

9 That testimony of the witness and all objections
10 made by counsel at the time of the examination were
11 recorded stenographically by me, and were thereafter
12 transcribed under my direction and supervision, and that
13 the foregoing pages contain a full, true and accurate
14 record of all proceedings and testimony to the best of my
15 skill and ability.

16 I further certify that I am neither counsel for
17 any party to said action, nor am I related to any party
18 to said action, nor am I in any way interested in the
19 outcome thereof.

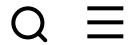
20 IN WITNESS WHEREOF, I have subscribed my name
21 this 11th day of January, 2022.

22
23
24 

25 LESLIE ROCKWOOD ROSAS, RPR, CSR NO. 3462

EXHIBIT 50

COINMARKETCAP.COM PRIVACY POLICY (Davis Ex. 4)



Cryptos: 16,411 Exchanges: 451 Market Cap: \$2,219,000,923,108 24h Vol: \$92,841,983,734 Dominance: BTC: 39.3%

Privacy and Cookie Policy

Exhibit
GO- 0004
1/7/2022
Jeremy Davis - V1

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